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UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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LISA MENNINGER,

Plaintiff,

Civil Action No.  
1:19-cv-11441-LTS

v.

PPD DEVELOPMENT, L.P.,

Defendant.

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BEFORE THE HONORABLE LEO T. SOROKIN, DISTRICT JUDGE

FINAL PRETRIAL CONFERENCE

Thursday, March 16, 2023  
2:01 p.m.

John J. Moakley United States Courthouse  
Courtroom No. 13  
One Courthouse Way  
Boston, Massachusetts

Rachel M. Lopez, CRR  
Official Court Reporter  
raeufp@gmail.com

## APPEARANCES

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## PROCEEDINGS

(In open court.)

THE DEPUTY CLERK: The United States District Court for the District of Massachusetts is now in session, the Honorable Leo T. Sorokin presiding.

THE COURT: Please be seated.

THE DEPUTY CLERK: Today is Thursday, March 16, 2023, and we are on the record in civil case number 19-11441, Lisa Menninger versus PPD Development, LP.

And would counsel please identify themselves for the record.

MR. HANNON: Good afternoon, Your Honor, Patrick Hannon on behalf of the plaintiff.

MR. WATSON: Hampton Watson on behalf of the plaintiff.

THE COURT: Good afternoon.

MR. MANDEL: Good afternoon, Your Honor, Rachel Mandel on behalf of Defendant PPD.

MS. CURRAN: And Patrick Curran on behalf of the defendant, as well.

THE COURT: I'm sorry, I didn't catch your last name.

MR. CURRAN: Curran.

THE COURT: Curran. Sorry. Thank you. Good afternoon.

1                   So let me tell you what I want to go over, and then  
2 I'm happy, when we're done with all of that, to go  
3 over anything else you want to raise.

4                   I'm assuming you didn't come here, the five of you,  
5 to tell me that you had settled the case, and so I'm assuming  
6 that means we're going forward.

7                   And I'll just say one thing about that. I know you  
8 went -- you went to mediation, like, awhile ago. I forget  
9 with whom. A private mediator, right?

10                  MR. HANNON: Yeah. It was Mr. Maffei, Tom Maffei.

11                  THE COURT: So some of you -- I think Mr. Hannon,  
12 maybe in January, tried a case in front of me, a different  
13 kind of case, somewhat different than this, and might have  
14 heard my longer, like, "think about it" speech. And I'm not  
15 going to give you -- I usually say that, if I give it -- I  
16 don't give it in every case. And when I give it, I usually  
17 prefer to only give it when the parties are present if I  
18 think there's a good reason. And I'm not -- I'm not going  
19 to -- I'm not giving it now, and I'm not going to tell you to  
20 bring your clients in to hear it. And I'm not inclined to  
21 give it on Monday when they're here before we have the jury,  
22 mostly because you all seem familiar with the case, you  
23 understand what the issues are.

24                  And what's important to me, I'll just tell you, is  
25 not whether you settle the case or you don't settle the case,

1 what's important for me is that you, Mr. Hannon, and your  
2 client, and for you, Ms. Mandel, your client, whoever is the  
3 determining person for the company, makes an informed and  
4 intelligent decision about whether to settle the case on the  
5 best terms they can get or to go to trial. Those are the  
6 only two choices. Right? And that people -- and that the  
7 only way to make an informed, intelligent decision to do that  
8 is to appreciate -- appreciating the risks and benefits.

9           And so I have no reason -- there's nothing about  
10 this case that makes me think that either counsel or the  
11 parties aren't appreciating the risks and benefits. And I  
12 sometimes do it even if I think people do appreciate the  
13 risks and benefits, because sometimes I think it's helpful to  
14 hear it from the judge. But that is what I think is really  
15 important, that people appreciate that.

16           And I will tell you that when I have cases that go  
17 to trial where I think someone didn't appreciate that, it's  
18 troubling, concerning, because it means they weren't well  
19 counselled, usually. Sometimes they were well counselled and  
20 they wished not to listen to the counsel. And that's a  
21 different issue, and that's, like, people's choice. Right?

22           So I'm not going to give you all that. I don't  
23 have any -- my sense is that people -- that you've talked to,  
24 you went through an experienced mediator. You had it, it  
25 didn't settle, that's fine. And I can see that the issues --

1       that there are issues here, and I can see -- there are  
2       triable issues.

3                  The only thing that I just leave for your  
4       consideration is that -- an observation, and you do with it  
5       what you will. And if you wish to do something about it, you  
6       can come to me, but otherwise I'm done with the topic, I  
7       think. Which is, in my experience, that in cases in which  
8       there are individuals who are parties, particularly  
9       individuals who are wronged, sometimes there is an extra  
10      power, in an odd way, of wearing a black robe and trying to  
11      settle a case. And the combination of wearing a black robe,  
12      in your courthouse, trying to settle a case, that that gives  
13      you, with both sides, a little more, like -- makes people  
14      think more about all the things that you talk about. It  
15      doesn't mean you're better at mediating. It doesn't -- but  
16      it does mean that people listen a little more and think about  
17      it a little more.

18                  So I say to that, as -- which isn't to any -- I  
19      don't mean that as a criticism of Mr. Maffei or of any  
20      private mediator. And there are things that private  
21      mediators probably can do that a judge can't do. And I will  
22      confess to you that I have almost zero experience with  
23      private mediation, just in terms of my career and as a judge,  
24      so it's not something on which I can really fairly give much  
25      of an opinion. But I can tell you from some experience that

1 I found that effect in, like, certain categories of cases.

2 Subcontractor to contractor in construction  
3 litigation, I don't know if there's any benefit to -- there  
4 may be benefit to have a private mediator who's deeply  
5 skilled and specialized in that area of law.

6 So I just make that observation to you. You can  
7 think about that. If, for some reason, that caused you to  
8 think you want to do something about that and you wanted to  
9 see one of the magistrate judges, I'm happy to try to arrange  
10 it. But you don't have to do anything. I'm not saying,  
11 like, get back to me by Monday morning or anything. You're  
12 all experienced and professional.

13 That's my observation. That's the only thing that  
14 occurred to me as I was thinking about the case in realizing  
15 that you had mediated. And I don't know if that would make a  
16 difference. And it won't -- if you came to me and you both  
17 wanted that, fine. If you didn't both come to me to want  
18 that, fine. You won't hear from me about it, I don't think,  
19 again.

20 So anyway, that's all I have to say about that.

21 In terms of the -- we want to go through all the  
22 issues. So voir dire and picking the jury, I just want to go  
23 over this, a couple things. This is the general process that  
24 we'll follow --

25 For you, Mr. Hannon, probably similar to what we

1 did in Benchmark, with a slight tweak. I can't remember how  
2 many people we picked in Benchmark.

3 So we'll bring in the venire into the courtroom  
4 Monday morning, whenever we get the jurors, hopefully around  
5 9:30 or 10:00. I'll ask the general questions. I'll go over  
6 those with you in a minute.

7 But the general questions will be all yes/no  
8 questions where they raise their hand. Each juror will  
9 identify themselves by number. They'll have their number  
10 written on a piece of paper and they'll hold it up, and we'll  
11 say "juror number 2, juror number 20."

12 When we're done with that, I'll send them all out  
13 to an adjacent courtroom, and I'll bring them back in one by  
14 one. But the only people that I'm calling in are the people  
15 who raised their hand. So if juror number 1 didn't raise her  
16 hand to any question, I'm not bringing her in. I'm going to  
17 go right into bringing in juror number 2, who did raise their  
18 hand.

19 And I'll put the juror in the witness box, and I'll  
20 ask follow-up questions about whatever it is that brought  
21 them there. And you can ask -- I'll then give you both a  
22 chance to ask follow-up questions. And follow-up questions  
23 are on the topics that brought them into the courtroom, not  
24 on, "What books do you read?" or whatever other topics.

25 And then they'll fall into, like, two categories.

1 There will be a few people I'm going to excuse on the spot,  
2 because they -- it's so -- they have an obvious, serious,  
3 scheduling issue, or an obvious, serious cause  
4 disqualification that I basically -- either I'm not going to  
5 even look to you, or I'm just going to briefly look to you  
6 like, "I'm excusing this person." And unless you jump up in  
7 and down, I'm going to excuse the person. But otherwise,  
8 they fall into the second category; I'm just going to send  
9 them out.

10 When they go past those two doors and they're not  
11 in the room anymore, so you don't have to worry about them,  
12 then stand up if you want to object for cause. That's the  
13 time to object for cause. And if somebody -- if the -- of  
14 course the staff person who's doing this is so efficient,  
15 they might already have the next juror coming in. Just stand  
16 up. I know what that means, and I'll tell them to take the  
17 next juror out of the courtroom. And I'll hear you, and  
18 we'll talk about it. And that's the time to make your motion  
19 for cause.

20 If the next juror gets to the witness box and I  
21 start to ask questions, the last juror is cleared. Okay?  
22 Because if you raise that, they're fresh in my mind and I can  
23 rule, and because your issues might make me think we should  
24 ask them more questions and I can bring them back. But I  
25 don't want to bring them back after we've started with other

1       people. So then I'll either excuse them for cause, or I  
2       won't excuse them for cause. I'll once in awhile say, "Let  
3       me think about that," and then I'll reserve and then we'll go  
4       to the next one.

5                   So we'll keep doing that until -- you each get  
6       three strikes. What we're going to do is seat no alternates.  
7       And we'll seat ten to 12 jurors, and at least ten, maybe 12.  
8       And how will I decide? It's really going to be how fast jury  
9       selection goes. So we're certainly -- I'm going to clear for  
10      sure 16 to 17 jurors, because that will mean that we have  
11      ten -- at least ten for the jury, and you're done with your  
12      strikes.

13                  If it's going pretty quick and it's easy to clear  
14      enough to get to eleven or 12 jurors, I'm going to do that.

15                  On the other hand, if we're doing this for a long  
16      time, we got jurors late, we cleared 16 or 17 to get to our  
17      ten, and the next nine people have raised their hand to five  
18      questions each, I might say, "You know what? We're going to  
19      stop here. This will give us ten or eleven, and we should  
20      get going." And so we'll see. And I'll just talk to you  
21      about that, and you can say something about it, if you want.

22                  So once we get to the -- we've cleared enough,  
23      however many we've cleared, 16 to 20, we'll stop talking to  
24      people. I'll probably clear one more than we need and --  
25      just in case. And then I'll bring them all back into the

1 courtroom, or at least bring everybody into the courtroom  
2 through the last cleared juror and maybe one or two more.  
3 And then I'll fill the jury box with the cleared jurors,  
4 starting with the lowest number juror. So if 1 was cleared,  
5 1 going to be in the first seat, and then whatever, okay, up  
6 to however many we're putting in, ten or 12, whatever number.

7 | And then --

8 (The Court and the deputy clerk confer.)

9                   THE COURT: So then strikes. So you each get  
10                 three. So the first round, plaintiff goes. And plaintiff  
11                 goes first, and you'll exercise -- I forget -- I forget how I  
12                 did it -- I'm sorry I'm a little confused, because this trial  
13                 I just did, it's a pro se plaintiff who's in custody, and I  
14                 did it a little differently, just to accommodate that.

15 So in any event, you'll go first. I think I did  
16 you do two strikes -- no, no, you do one and one. Yeah.  
17 Because it's a civil case.

18 You'll go first, Mr. Hannon. You'll be -- you'll  
19 strike somebody, if you want.

20 | And then you'll go and strike.

21                   And just go back and forth, one by one, until  
22 you're either out of strikes or you say there's no one else  
23 in the box that you want to strike. And same for the  
24 defendants.

25 And then I'm going to excuse everybody you struck.

1 Anybody you didn't strike, they're on the jury. No  
2 back-strikes.

3 And so then round two, I'll fill the empty seats.  
4 And in round two, defendants will go first, and we'll do  
5 defendant, plaintiff, defendant, plaintiff back and forth,  
6 same thing. We'll just alternate rounds like that until we  
7 have the jury.

8 When people get into the box, I will ask everyone  
9 to say what they did for work -- what they do or did for work  
10 and what their spouse, significant other, whatever person  
11 they live with, did or does for work, just so you -- that way  
12 you've at least heard from someone who never raised their  
13 hand.

14 And then we'll have the jury, and then we're done  
15 with that. We'll take a five minute break, we'll come back.  
16 I'll do preliminary instructions, which I'm not going to  
17 review with you. They're -- they're just like what is  
18 evidence, what is not, the burden of proof. I'm not  
19 precharging on the elements of the claims. And then opening  
20 statements and evidence.

21 And so, generally speaking in terms of a schedule,  
22 9:00 to 1:00 -- well, for the jury, 9:00 to 1:00 each day.  
23 For all of you, 8:30 to 1:00. We'll meet at 8:30 to talk  
24 about whatever issues need to be talked about. If it turns  
25 out after time that we don't need to meet at 8:30, we'll meet

1 later, or what have you. And if we need to meet earlier --  
2 that's the time to, like, give me the -- if you can, on the  
3 day before -- we'll talk about this later -- you give me the  
4 documents if you think I need to read something. I want to  
5 go over the evidentiary issues that you anticipate will come  
6 up that day. Because I can either resolve them, and even if  
7 I can't resolve them, you can preview them for me.

8 My goal is from 9:00 to 1:00, the jury is hearing  
9 evidence the whole time. In a perfect world, there would be  
10 no sidebars.

11 I don't have a no sidebar rule. That's just, if we  
12 do it well, we would -- that's what we'd accomplish.  
13 Sometimes there will be sidebars and they'll have to sit  
14 there, but we'll try to do that before 9:00, at the break at  
15 11:00, because we'll break around 11:00 for about 15 minutes,  
16 or after 1 o'clock.

17 Monday, we might go all day, just because they're  
18 going to expect to be here all day. So we'll talk a little  
19 more about that during the pretrial conference, depending on  
20 how fast we get the jurors and how far we should go. And  
21 I'll talk to you a little bit about it about how far we might  
22 go on Monday.

23 (The Court and the docket clerk confer.)

24 THE COURT: So we'll keep going for now, but I have  
25 a jury that's deliberating and they've reached a verdict.

1 And so one we have everyone, we have the defendants and their  
2 lawyers here -- but as I said, the plaintiff is pro se and  
3 he's in custody, so he has to be brought up. So once they're  
4 ready for that, then we'll break. You can stay, but then  
5 we'll break, I'll take the verdict, and then we'll resume.

6       Okay. Any questions about the process?

7       MR. HANNON: Just when do you expect to decide  
8 regarding whether Monday is all day or not? Is that going to  
9 be Monday morning you decide, you think?

10      THE COURT: No, I'm thinking of talking to you  
11 about it today.

12      MR. HANNON: Okay.

13      THE COURT: What I'm really thinking, aloud, is  
14 simply this. If we get the jurors at 9:30 and we're done  
15 with -- I would love to get as far as we can on Monday, and  
16 part of it depends how long you think the trial is going to  
17 last. So the real question in my mind would be, like, do we  
18 go past openings. Right? And witnesses. And because -- but  
19 we'll talk about that when -- I guess that's --

20      How long do you think the trial will be?

21      MR. WATSON: I would expect that we're going to be  
22 done within the two-weeks allotment. I would prefer that we  
23 go longer on day one, in part because I anticipate that the  
24 plaintiff will be the first witness, and given her condition,  
25 I think the more her testimony is broken up, the more

1 difficult it's going to be on her, given her anxiety.

2 THE COURT: Well, if you're willing to do that, I'm  
3 fine to go until 4:00 or 4:30 on Monday. And then each day  
4 thereafter, we go 9:00 to 1:00, in part because it's not so  
5 hard on the jury, the first day, because they expect it, but  
6 also because they won't be sitting, listening to evidence  
7 from 9:00 to 4:30. They'll be listening to evidence only  
8 part of the day.

9 Okay.

10 Is that fine with you?

11 MR. CURRAN: Yes.

12 THE COURT: So plan on going all day until from  
13 4:00, 4:30. So plan on going something like, subject to the  
14 juror issues --

15 Are you ready? Are they ready with him, or not  
16 yet?

17 THE MARSHAL: He's not here yet.

18 THE COURT: Okay. That's fine.

19 9:00 to 1:00, break 1:00 to 2:00 for lunch, 2:00 to  
20 4:00, 4:30. And okay. And then each day thereafter, we'll  
21 go 9:00 to 1:00, until they -- the last day. And that day  
22 will be all day, even if it -- not only for deliberations,  
23 but even if that's for closing arguments or whatever.

24 Okay. Anything else about that?

25 MR. HANNON: Nothing here, Your Honor.

1                   THE COURT: Okay. So voir dire. Let me just tell  
2 you what -- I'm going to give them a little statement about  
3 jury service and the like. I'll introduce the parties. I  
4 will -- I'll have you introduce your client, and your  
5 clients.

6                   Are you going to have somebody from the company  
7 who's at counsel's table?

8                   MS. MANDEL: We will have a representative from the  
9 company.

10                  THE COURT: Okay. Fine. So you can introduce that  
11 person, and that's fine.

12                  And I'll have you introduce yourselves and whomever  
13 you're with or your assistants, whoever is going to -- if  
14 you're going to have someone like that, that's fine. And  
15 I'll ask them if you they know them.

16                  I'll read the list of witnesses that I have. And  
17 you'll just -- I think I have everybody from the list, but if  
18 there's another name that you want read, you can tell me.

19                  I'll ask them then anything that they know about  
20 the case, interest in the case.

21                  I'll ask them if they know each other.

22                  Okay. So there's two questions that I wanted to  
23 sort of talk to you about. One is sort of -- one of you  
24 asked for a question, something about -- something like this.  
25 This is my reframing of it: Have you, a family member, or a

1 close friend ever worked in the fields of psychology,  
2 psychiatry, social work, other licensed therapy providers,  
3 pathology, or pharmaceuticals?

4 And then I guess my question is why? And what  
5 would we do with that if they answer yes?

6 MR. HANNON: I would expect that we would ask  
7 follow-up questions in terms of what their experience has  
8 been.

9 THE COURT: So I guess I break it apart in two  
10 parts. As to pharmaceuticals, I understand I think this  
11 business was pharmaceuticals in some way?

12 MR. HANNON: It's -- they're a testing business.

13 THE COURT: Testing business for pharmaceutical  
14 companies.

15 MR. HANNON: I believe that's accurate.

16 THE COURT: Is that roughly right?

17 MS. MANDEL: Roughly. For these purposes, yes.

18 THE COURT: Okay. So, like, what -- like -- but  
19 what difference -- what would we ask them if they worked for  
20 a pharmaceutical company that would possibly bear on whether  
21 they could be fair and impartial, which wouldn't be got at,  
22 "Do you know these people? Do you work with PPD? Do  
23 business with PPD?" Like the number of people who work for  
24 pharmaceutical companies -- you can tell me, I'm just try to  
25 go figure out, as to that category, as opposed to the therapy

1 category.

2 MR. HANNON: Sure. So I think it's the follow-up  
3 question the might elicit helpful information.

4 THE COURT: Like what would the follow-up question  
5 be?

6 MR. HANNON: In terms of what their involvement is.  
7 So, for example, are they in a role at a pharmaceutical  
8 company where they interact with lab businesses? Do they  
9 interact with PPD's corporate parent, Thermo Fisher? They  
10 might have interacted with companies that some of the  
11 witnesses at issue might work for. So if they're --

12 THE COURT: So I could see -- but that could be  
13 true -- like, Thermo Fisher, I don't know much about them,  
14 but I read about them a little bit in the paper, I think  
15 they're like a massive employer and a huge company with lots  
16 of subsidiaries is my sense.

17 Sound right to you?

18 MR. HANNON: It does, yup.

19 THE COURT: If that's an issue, which I'm not  
20 sure -- but why don't you just ask them if they've had  
21 dealings with them? That would be more direct. Why wouldn't  
22 that be more direct?

23 MR. HANNON: Sure. Because it wouldn't necessarily  
24 just be Thermo Fisher. So during the course of the  
25 testimony, they're likely to hear about other companies in

1           this same sort of space.

2           THE DEPUTY CLERK: They're here.

3           THE COURT: Ready? Okay. We'll break now.

4           Probably you should -- certainly you should take  
5           your things, because he's going to be sitting there.

6           (Court in recess at 2:21 p.m.

7           and reconvened at 3:06 p.m.)

8           THE COURT: So I guess what I'm wondering about it,  
9           there are two things about the two categories -- you can say  
10          whatever you want. For the pharmaceuticals and pathology,  
11          I'm just wondering, like there's so many people, what is it  
12          that we're looking for, and could we ask a more specific  
13          question if there's something to ask. Because otherwise, it  
14          seems the case is much more not about pharmaceuticals or even  
15          labs. It's much more about her. Maybe was she able  
16          disabled? What was the extent of her disability? How does  
17          it effect -- what are the essential features of her job?  
18          What were the reasonable accommodations? Were they  
19          reasonable? All those issues.

20           And you can introduce something about it, but I  
21          think of all the people that I've just run into in my life in  
22          the pharmaceutical industry -- and honestly, none of them  
23          strike me as, like, because of that experience, they know  
24          anything about anything related to this. Like I might want  
25          to know if they have a -- they're business has a -- like they

1 work with PPD or Thermo Fisher, because of like -- I might  
2 want to know that if that was a lawyer.

3 MR. HANNON: Yeah, I think that's a fair  
4 observation, particularly given the number of jurors that may  
5 be inclined to raise their hand given the breadth of the  
6 pharmaceutical piece of it.

7 THE COURT: Right.

8 MR. HANNON: And I think given your observations,  
9 maybe the better approach is we could be a bit more  
10 thoughtful in terms of making sure that all of the potential  
11 companies that are going to get mentioned, that the jurors  
12 are asked whether or not they have any affiliation.

13 THE COURT: Yeah. Like if you give me a list of  
14 companies, for example, I'm happy to read them when I read  
15 the witness list and just say, "These are the people and  
16 companies that you are going to hear about. If you work  
17 with, you know these people or this company -- or you know  
18 these people or work with these companies, tell us." And  
19 then we can see. Like, you know, we'll get the accountant  
20 who does accounting work for whatever the other company is,  
21 or whomever. And I'm fine with that. Why don't you just see  
22 what you think about that.

23 And then the other part -- so the therapist, what I  
24 call the therapist category of people, I'm wondering is the  
25 point that if they're on the jury, they should understand

1       that they're not in there as an expert and they're there --  
2       like they might -- whether they work with people with this  
3       particular disorder or they work in a totally different  
4       aspect of those fields, they might view themselves as, like,  
5       "Well, I know about that. I know what the DSM says about  
6       that." Or, "I know how to read medical records." And they  
7       might bring that expertise to bear in some way. And is it  
8       that you don't want them to be an expert, or is there  
9       something else?

10           MR. HANNON: I think it's similar to the concern  
11       that you just raised. It's not just that those folks are  
12       inclined to view themselves as experts, but -- but they're  
13       more likely to have experiences that -- that may give them  
14       some bias with respect to the issues in this case.

15           So, for example, you know, they may have a family  
16       member who pursues a certain field of psychiatry or a certain  
17       discipline within it, and may, even if they themselves don't  
18       know it, they have some tangential knowledge.

19           So again, the point of the question is not the  
20       original question itself of simply screening out everyone  
21       that's got any experience.

22           THE COURT: Sure.

23           MR. HANNON: But the follow-up question of, "Well,  
24       tell us what that is," and finding out if that experience is  
25       something that we may have some concerns, they may have some

1 preconceived notions, And if so, asking them, "Despite that,  
2 are you able to set that aside? And rather than judge this  
3 based upon your own experiences, based upon the evidence" --

4 THE COURT: Sort of like the law enforcement  
5 question -- a cousin of the law enforcement question in a  
6 criminal case?

7 MR. HANNON: Right. Yeah.

8 THE COURT: Okay. So I'll ask them:

9 Have you, a family member, or a close friend ever  
10 worked in fields of psychology, psychiatry, social work,  
11 or other" --

12 Are there other licensed therapy providers besides  
13 those?

14 MR. HANNON: That's not necessary.

15 THE COURT: Okay. So psychology, psychiatry, or  
16 social worker.

17 And then if they say yes, we'll -- "Just tell me a  
18 little bit" -- the follow-up question is, "Tell me a little  
19 bit -- who it is, and tell me a little bit about what it is."  
20 If they work -- they, themselves are licensed, I get it, they  
21 shouldn't be, just like a lawyer is not a legal expert on the  
22 jury. I'll just tell them, and can they do that, and we'll  
23 see. And otherwise, what's the level of it, and we'll see.

24 Is it really, like, family member or any close  
25 friend that you're thinking? I'm just thinking about are

1       they really likely to have acquired much -- it's not sort of  
2       quite such a strong identification as sort of law enforcement  
3       that sometimes runs in families.

4                    MR. HANNON: I don't know. I think my experience  
5       is doctors tend to talk with their families a lot about  
6       interesting cases and approaches and all of that.

7                    THE COURT: Okay. I'll leave it, see what happens.

8                    That's the only -- then I'm going to ask them:

9                    Have you, a family member, or a close friend ever  
10      been fired from a job for reasons that you believe were  
11      unfair, discriminatory; been accused of discriminating or  
12      retaliating against someone in the workplace; been involved  
13      in any kind of investigation at work of the same as  
14      management, witness, or employee requesting an accommodation  
15      for disability in the workplace or requested --

16                  I think I'm going to skip the medical leave,  
17      because that is -- there's -- I understand she did take  
18      medical leave here. But medical leave is so broad that I  
19      think with so many people raising their hand for things that  
20      have nothing to do with this case. And I think the other  
21      encompasses it, as well as the general question: Is there  
22      anything about this case that would make it difficult for you  
23      to be fair and impartial, having told them about the case.

24                  I'll ask them if they've ever worked in a  
25      supervisory position where you received or considered a

1 request for accommodation for an employee's disability.

2 Then there's some general questions: Have you  
3 formed an opinion about the case? Has anyone talked to you  
4 about the case? Are you aware of any bias or prejudice? Or  
5 anything about the facts or parties in this case that might  
6 make it difficult for you to be fair and impartial?

7 The rest of the stuff is just general legal  
8 principles, like can you follow the law and you may only  
9 decide it based on what happens in the courtroom. Have you  
10 ever been involved in -- you, a family member, or a close  
11 friend in a civil lawsuit as a party or witness or in a  
12 lawsuit similar to this one.

13 I'll ask them if they've ever served as a juror in  
14 any way and if such service might make it difficult for them.  
15 So rather than bringing everyone up who's been on a jury,  
16 only bring people up who think that might make it difficult  
17 to serve here.

18 Language question, hearing question, schedule  
19 question.

20 Let me read to you what I was thinking of saying as  
21 the neutral description, and you can tell me if there's  
22 something else or different that I should say:

23 This is a civil case. The plaintiff is the person  
24 bringing the case. In this case, the plaintiff is Dr. Lisa  
25 Menninger. The defendant is the party being sued. Here the

1 defendant is PPD Development, LP, which I will refer to as  
2 PPD for short.

3 Dr. Menninger is a former employee of PPD. PPD  
4 hired Dr. Menninger in August of 2015 to work as the  
5 executive director of its global central labs based in  
6 Kentucky.

7 In January of 2018, Dr. Menninger disclosed to PPD  
8 that she suffered from social anxiety disorder and panic  
9 disorder, and she requested that PPD provide her with  
10 accommodations for these conditions. She alleges that  
11 thereafter, PPD failed to provide her with reasonable  
12 accommodations for her medical condition, discriminated  
13 against her on the basis of her conditions, and retaliated  
14 against her for requesting accommodations.

15 Dr. Menninger further allegations that PPD's  
16 actions severely exacerbated her preexisting medical  
17 conditions, caused her to develop major depression, and  
18 ultimately rendered her unable to work. She seeks to  
19 recover for the lost wages and emotional distress that she  
20 alleges she suffered as a result of PPD's alleged actions.

21 PPD denies Dr. Menninger's allegation.

22 Fine? Any changes, additions, subtractions?

23 MR. HANNON: That's fine from our perspective,  
24 Your Honor.

25 MS. MANDEL: And fine from ours.

1                   THE COURT: Fine. Okay. So that's pretty much  
2 everything for the voir dire. The only follow-up that you'll  
3 get me -- you'll file some -- talk to each other, what list  
4 of company names I should read when I read the names of the  
5 witnesses.

6                   MR. HANNON: Okay. And you want that before Monday  
7 morning or --

8                   THE COURT: Honestly, I -- I just need it before  
9 the jurors come in.

10                  MR. HANNON: Okay.

11                  THE COURT: It doesn't really matter when. I just  
12 need to have in my hand before they come in the room just so  
13 I can read it.

14                  But if all of you agree, I'm going to read the  
15 names. I don't have a problem with that. It makes sense to  
16 me. I generally think we should read names of people, even  
17 if they're not witnesses, if they're someone they're going to  
18 hear a lot about, where they might have to make a decision  
19 about that person.

20                  So, for example, in this trial, I read the names of  
21 the perpetrators, even though one of the perpetrators in no  
22 way was he going to be a witness. Because if they knew him,  
23 if they were the victim, they shouldn't be on the jury.

24                  So fine. Just give me the names. No problem.

25                  All right. So that brings us to the motions in

1 limine. Let me --

2 One thing back about the schedule. So if we start  
3 on Monday and we go 9:00 to 4:00, 4:30.

4 Do you know, Kellyann, how many people are  
5 impaneling on Monday?

6 THE DEPUTY CLERK: Just us.

7 THE COURT: Oh. Great.

8 So we're the only people right now impaneling on  
9 Monday, which means we should get the jurors 9:30, 9:45.

10 So what time did we finish with Rice with the jury?  
11 Like 11:00?

12 THE DEPUTY CLERK: Like 11:30.

13 THE COURT: So if we figure we have the jury by  
14 11:30, I think two -- those two questions about the -- are  
15 going to -- engender some number of raised hands. And if you  
16 figure 20 minutes for the preliminary instructions, how long  
17 are you each going to be for openings, about?

18 MR. HANNON: I would expect about 15, 20 minutes.

19 MS. MANDEL: Similar for us.

20 THE COURT: So say an hour to do the preliminary  
21 instructions and the openings. So hopefully we're done with  
22 all of that by 1 o'clock. And then we'd have 2:00 to 4:00,  
23 4:30. So two, to two and a half hours for witness testimony.  
24 And thereafter, 9:00 to 1:00 -- like, are you --

25 I'm going to tell the jury in the voir dire how

1 long it lasts, but I'm going to present it as a promise, like  
2 that they will get it by -- we're starting on Monday, by the  
3 Friday the following week. That that means that no later --  
4 that means that we start closing arguments on that Friday  
5 at -- no later than at 2 o'clock, really, ideally at 9:00 or  
6 10:00. And that will give you time for closing arguments,  
7 instruction. And they will get it by 4:00, 4:30, I would  
8 feel like I met my promise. They would have at least a half  
9 hour to deliberate.

10 If they get it earlier, they'll be happy.

11 My experience is that if we tell them Friday and  
12 they get it Friday, they're okay. If they get it Thursday  
13 earlier, they're thrilled. If they get it after Friday, then  
14 they get grumpier. So it's better to tell them in advance  
15 longer, than it is to extend it afterwards. Sometimes we  
16 have to extend it. Snowstorms are different, and that  
17 doesn't count. That doesn't count in my mind as an  
18 extension.

19 So I'm just -- so does that seem -- you all know  
20 the case better than I. Like if we do that, and efficiently,  
21 will we -- like you're comfortable and reasonable with that?

22 MR. HANNON: I am, Your Honor.

23 MS. MANDEL: We are, as well. Thank you.

24 THE COURT: Good. Okay.

25 Motions in limine. I've read them all. I want to

1 talk first about defendant's motion to exclude documents  
2 produced on February 24th, number 103. And let me just  
3 explain the -- what I discern from this, and maybe you have  
4 an explanation, Mr. Hannon. But I looked through this, and  
5 so on the Rule 26 disclosures that I have, that were  
6 submitted with these exhibits, you list backpay, front pay.  
7 Are these stock options -- the stock and the stock options,  
8 are they within pay? I don't know. They're not wholly  
9 different, but I don't ordinarily think of them exactly as  
10 pay. But I understand she gets them as pay in a way. And  
11 there's no particular computation there, though, of that.

12 And then there's the interrogatory answer, where  
13 clearly you say she would have been entitled to -- you not  
14 only lost salary, and so forth, but other things she would  
15 have been entitled to, in connection with her employment with  
16 defendant, i.e., stock options, equity, et cetera. If I read  
17 that, I would think he was going to be claiming that. That's  
18 what he said in response to the interrogatory.

19 And then you then say the essential facts  
20 establishing, that is answering the other part of the  
21 interrogatory, that's for the computation of damages to these  
22 categories that are reflected in the documents produced by  
23 plaintiff. Plaintiff anticipates expert testimony will be  
24 provided to further illuminate it.

25 But the expert specifically carves out, as you

1 point out, he's not rendering an opinion about those things,  
2 so they can't find that computation damages in the expert  
3 report about options or equity. And the document, the P-101  
4 document, is, I have the impression, explains the basis for  
5 the claim; that is, that that's the document that gives her  
6 openings and grants.

7 And I'm wondering about the computation. Like how  
8 do they -- I don't really know, I can't really tell. This  
9 could be a super simple mathematical computation, or it could  
10 be fairly complicated.

11 And anyway, so I'm wondering about that, because  
12 it's not -- I'm not persuaded that it's a -- you had no idea  
13 he might be talking about that. He said something there.  
14 But I can also see how you -- like if I read that and I  
15 didn't have any document showing entitlement and I didn't  
16 have any document that explained what your calculation was  
17 and the expert didn't address it, I might come to the  
18 conclusion that it's not in play. And I would probably also  
19 come to the conclusion, I don't need my expert to address it.  
20 And I'm wondering about that.

21 That seems to me in part, in a way, what they're  
22 saying, and a little more significant than just the timing of  
23 documents.

24 MR. HANNON: Sure. So to clarify, the production  
25 of documents included many documents demonstrating what her

1 equity rights were and what she had in terms of stock and  
2 options; that all of that was timely disclosed with our  
3 productions in this case.

4 P-101 is just sort of a better version of that.

5 It's sort of a clearer, kind of, one-stop shopping sort of  
6 thing.

7 If you take P-101 out, we've still got all the same  
8 information with respect to the documents that's out there.

9 THE COURT: You mean that she got this many shares  
10 of stock and that she has this many options; and that she had  
11 to sell the stock when she got terminated, and otherwise she  
12 wouldn't have had to then sell the stock. And then she would  
13 have had it -- absent termination on the day of termination,  
14 she would have had this many options and this many grants.

15 Are you claiming that she would have accumulated  
16 more before Thermo Fisher purchase, putting aside stock  
17 splits?

18 MR. HANNON: We don't have any information of that  
19 right now. Part of the problem is that discovery closed  
20 several years ago. The Thermo Fisher acquisition happened in  
21 the meantime. So there's a certain level of sort of an  
22 unknown here in terms of what, if any, equity or additional  
23 compensation was issued to this category of employee at the  
24 time of the acquisition.

25 THE COURT: I see. So she didn't have a contract

1       that said, you know, after three years, you get 25 years, and  
2       the fourth year you get another 25, and the fifth year -- so  
3       if she was terminated at year three, you could say, oh, well,  
4       year four, and she would have gotten this, and year five. If  
5       she gets more shares than she had at the time she was  
6       terminated, she only gets them because there was a  
7       class-wide, so to speak, decision that everyone at her level  
8       or every employee or every of some category that she would  
9       have fallen into would receive some additional shares?

10            MR. HANNON: That's accurate, Your Honor.

11            THE COURT: All right.

12            MR. HANNON: Back to what I was saying about kind  
13       of what was disclosed in the documents. So even if you take  
14       P-101 out, we already have all the information there in terms  
15       of what she owned. P-101 is just sort of a cleaner way of  
16       presenting to the jury.

17            In terms of the sort of calculation, you know, the  
18       problem there is that the actual calculation is largely  
19       dependent upon things that have happened more recently,  
20       particularly relative to the Thermo Fisher acquisition and  
21       the stock actually having value.

22            THE COURT: But wouldn't you have had to, like, at  
23       the close of, say, fact discovery, or some time, say, this is  
24       our computation now, as of now. Sure, like, it could -- it  
25       might, given Thermo Fisher acquisition, maybe you update

1       that, maybe it changes. But, like, I'm wondering, there  
2       doesn't seem to be any computation.

3            MR. HANNON: Right. Only because it's a moving  
4       target, right? In terms of what her equity rights are worth.  
5       If we're picking a number based upon a particular day, that's  
6       not going to be the value at the time of the trial. That's  
7       sounds like a value that she's seeking. So certainly with  
8       respect to categories like backpay, we know what was being  
9       paid.

10           THE COURT: Sure.

11           MR. HANNON: But things like equity, we know what  
12       she had for equity. We don't know what that equity is going  
13       to be worth at the time of trial. So we could certainly give  
14       a -- a value at any particular point in time, but that's not  
15       really a disclosure that does anything. They know what their  
16       stock is worth. So they're not -- they're not losing  
17       anything in terms of us doing the math and telling them what  
18       the math is.

19           THE COURT: So is your -- like at trial, assuming  
20       you get to do whatever you want, is your calculation she had,  
21       like -- I don't recall the numbers, but she had X number of  
22       shares in your papers on this motion, and there was a 25,000,  
23       or something, options. And so she had these two things, and  
24       it's just the stock times 47.5. And the options -- the  
25       number of options times 47.5, 47.5 being the Thermo Fisher

1 purchase price for all of those things. And as to the  
2 options then minus the strike price, or whatever you had to  
3 pay for them under the contract.

4 MR. HANNON: It's a little more complicated than  
5 that, because there was a conversion done in connection with  
6 the acquisition. So it's not a one-for-one tradeoff. So you  
7 have to do a little bit of math to figure out how many shares  
8 in PPD equates to how many shares in Thermo Fisher.

9 THE COURT: Okay.

10 MR. HANNON: But once you do that math, then I  
11 believe the you math that you described is all that's left.

12 Is that right?

13 MR. WATSON: Are you talking about the stock split?

14 MR. HANNON: Yes.

15 MR. WATSON: Sorry. The stock split was in 2020.  
16 But it's just simply multiplying by 1.8 or dividing by 1.8.  
17 So it's quite simple math. That was before the Thermo Fisher  
18 acquisition. But as long as you account for the stock split  
19 and then two adjustments to the strike price, which are just,  
20 again, adding and subtracting type calculations, you can  
21 figure out the price you would have gotten at the time of the  
22 Thermo Fisher acquisition.

23 THE COURT: But why don't you have to at least say,  
24 "Here's our calculation"? Like it's this -- like at the end  
25 of fact discovery -- maybe fact discovery ended, I forgot,

1 before the stock split or after, but either without that  
2 calculation or with the calculation, depending on the timing,  
3 and then, like, "What we're claiming is like the value. And  
4 the value -- we'll be claiming the value, you know, at" --  
5 that she could just hold on to it, and it has this value. So  
6 the value at trial, minus whatever she was paid for it. And  
7 then you could update it with, "Well, there a stock split,"  
8 or update it with -- why wouldn't you have to commit that  
9 way?

10 MR. HANNON: Because there was no definitive value.  
11 Right? We're talking about shares in a privately held  
12 company. So until the acquisition actually takes place and  
13 there's -- there's no sort of ascertainable.

14 THE COURT: All right. Well, so it was a privately  
15 held company. But wouldn't you then have to say, "We want  
16 either" -- wouldn't you then have to say, "We want -- one of  
17 the things that we want is the value of this." Right? "And  
18 then so we -- this is what we know. We think she's entitled  
19 to this many options and this many shares, and we want the  
20 value of that. And the value of that, we're going to have,  
21 probably, an expert." Or, "We say it's worth this because of  
22 some" -- whatever, you got venture financing or whatever.  
23 Right? There are a lot of different ways you could do it.  
24 It was a non -- presumably a nonzero number.

25 And then presumably you could change that position

1 because of events, right? That's what I'm taking from there.  
2 I don't know if I'm putting words in their mouth, but I'm  
3 wondering if that's what they're thinking.

4 MR. HANNON: So in terms of what we could have  
5 done, I think you're right, that you can -- you know, you can  
6 do a sort of valuation of a private company to come up with a  
7 value of --

8 THE COURT: Here's what I'm wondering, though,  
9 then, right --

10 MR. HANNON: But that doesn't necessarily get you a  
11 price, because there's no actual buyer for it, right? It's  
12 not until someone actually comes and buys the company that  
13 you really have an ascertainable value to it.

14 THE COURT: Sure. But if it were a private  
15 company, right, you would be -- you could be seeking the  
16 value of those shares, and there are a variety of proof  
17 methods that you could use to prove it. Like you could get  
18 a -- you could have a company valued or you could look at  
19 different things that they did. They got bank loans against  
20 assets or their revenue is -- and you got to say, "Well, it's  
21 20 X of revenue," or whatever. And when they paid somebody  
22 else, they bought somebody out. Whatever. There are  
23 different method that you could use to try to ascertain the  
24 value of those shares that she didn't have anymore, that she  
25 would have gotten.

1                   And I understand those more -- like I guess what  
2 I'm wondering is I could see them thinking, well, that's how  
3 you would have to do one method like that for private  
4 company. You didn't do that. You didn't have your expert do  
5 it. So ah-ha, you must not be seeking it. We don't have any  
6 way to figure out what it's worth. That's like a conclusion  
7 that they might have come to. And if it were a private  
8 company still, you'd probably be out of luck. Right?

9                   MR. HANNON: I think that's right, Your Honor. If  
10 it was a private company still, then we would be relying on  
11 some kind of a valuation, and we didn't do that kind of  
12 valuation. So you're right.

13                  THE COURT: So then what I'm wondering is they're  
14 sort of thinking you're not doing it, and all of a sudden --  
15 I understand it's a simpler evaluation now than it was then,  
16 but they might have come to that conclusion. And what would  
17 they have done if they had known you were seeking it? Maybe  
18 they would have done something differently. I don't know.  
19 What do you think about that? That's what I'm wondering  
20 about. That's what I sense when you narrowed it down to the  
21 biggest issue.

22                  MR. HANNON: One, I don't think that there's  
23 anything that they could have done differently, because we  
24 aren't talking about something that is disputed or  
25 disputable. Right? The value of their stock is the value of

1       their stock. The stock split, it's reported in there, in  
2       their documents. It's not a contested or contestable fact.  
3       There's -- this isn't an issue where we're looking at  
4       something that's a matter of opinion or a matter of judgment  
5       here. What we're looking at is a mathematic computation.

6                  THE COURT: What do you all have to say?

7                  MS. MANDEL: Your Honor, I actually do think it's  
8       more complicated. What the value would have been -- right,  
9       first of all, it's entirely speculative at this point,  
10      looking back. And indeed, the company's actions --

11                 THE COURT: Which is speculative?

12                 MS. MANDEL: What the value of what Dr. Menninger  
13       would hold now. The company would have taken different  
14       steps, had we had any idea that this was a direction --

15                 THE COURT: So two different parts. One, what  
16       would you have done if -- if --

17                 Mr. Hannon has essentially conceded that if the  
18       company were still private, he would be out of luck. He  
19       couldn't be seeking the value for options, because in order  
20       to do that, he would have had to have some expert or  
21       something like that or point to something for valuation to  
22       determine. And he said --

23                 So tell me -- and if he had done that, then he  
24       would have probably changed his methodology of proof, because  
25       then the company sold and he would -- rather than rely on the

1 valuation of what PPD was, he might then switch to times the  
2 47.5 and the, quote, simple math that he described.

3 So what would you -- had he done all of that, what  
4 would you have done differently?

5 And then I guess second, why is the calculation  
6 speculative or not so simple? Because those seem to me like  
7 somewhat different questions.

8 MS. MANDEL: Understood, Your Honor. And what we  
9 would have done is a little bit hard to say at this point.  
10 Right? But we certainly would have done more to understand  
11 what Dr. Menninger thought this value was, where she had that  
12 information from, consulted our own people within the  
13 company, both PPD and Thermo Fisher, to understand if that  
14 was accurate. In any and all likelihood, we would have had  
15 some type of information from Dr. Menninger's own economic  
16 expert about how these numbers play out and what value it  
17 might have going forward. And then we would have had our  
18 expert respond, all of the things that you do during expert  
19 discovery to better understand from both parties. That's one  
20 thing that we would have done.

21 And I will just note that in terms of doing further  
22 exploration within PPD and Thermo Fisher to understand what  
23 that value is from our perspective is really no small task,  
24 because we're talking about following through with people  
25 who, in some instances, are no longer there. After the

1 acquisition, different things happened with that type of  
2 department in the company. Right? So really, this is  
3 information that, in some ways, we were no longer able to  
4 obtain once we got this late disclosure of sort of this  
5 approach.

6 THE COURT: So what you're saying is the following  
7 is beyond hypothetical, it's fantasy. But if I said, "Oh,  
8 I'm going to move the trial for three months" --

9 I'm not doing that. Okay. That's why it's  
10 fantasy, but just saying.

11 If I were to move the trial for three months and I  
12 said to you, "Okay. I'm moving the trial for three months.  
13 I'm going to let him do this. But tell me what you need."  
14 What you're telling me that you would need is you would want  
15 to serve him an interrogatory that says -- or you'd either  
16 need a motion to compel or an interrogatory that says, "Give  
17 me the exact computation about how you're computing the stock  
18 option grant and the stocks as the evaluation. Lay it out in  
19 a piece of paper." That's what you would want. Essentially  
20 a supplemented interrogatory 10, where you asked for that.

21 And then you would want to take that, and you would  
22 go to the people in-house at PPD or Thermo Fisher and say --  
23 and look at these documents, P-101 or the other documents, as  
24 well as the computation, and say, "Okay. Is this right? Is  
25 this how you would calculate it, assuming that -- and what

1 are the things that you see, whether" -- even if it's correct  
2 or there were different dates or however you would calculate  
3 it.

4 And then you would understand it and decide you  
5 have -- like you agree, if she gets that far, that's the  
6 right calculation. Or, no, you don't, and you would  
7 calculate it this way, or whatever -- and then you would also  
8 decide whether you needed your expert to opine on that.

9 Would that pretty much be what you need to do?

10 MS. MANDEL: That's right, Your Honor.

11 And part of this might have involved not only  
12 additional interrogatory questions, but also trying to  
13 understand was there another witness in the background,  
14 perhaps a financial advisor, giving Dr. Menninger information  
15 and advice to help her understand what the value of this  
16 might be. This is all -- we've heard from counsel what they  
17 have determined, but we really don't know where this  
18 information is coming from, whether Dr. Menninger has done  
19 this exploration on her own, if there's someone else helping  
20 her. This has all been a bit of a black box.

21 We received 1,400 documents on February 24th, less  
22 than a month before trial, and we really don't know what else  
23 is going on behind the scenes in Dr. Menninger's  
24 calculations. And that really shouldn't be, given the  
25 lengthy discovery in the case and the opportunity for

1 additional discovery in the intervening period, if it was  
2 called for by a change in business circumstances.

3 THE COURT: What do you want to say?

4 MR. HANNON: The SEC, that's where they go to find  
5 the information. They don't need to go to Dr. Menninger or  
6 somebody else. They go to the SEC. And the SEC has it  
7 because they gave it to them. And we outlined in our  
8 opposition the exact reports, the 1,400 documents, 1,400  
9 pages that they got, and it's all those lengthy SEC reports.  
10 And we sort of spelled out, you know, which ones have the  
11 sort of necessary numbers here.

12 But this isn't a fact issue. It's not a disputed  
13 issue. They can provide hypotheticals of different things  
14 they might have wanted to ask or places to look, and all of  
15 that. They didn't to look in any of those places; it's in  
16 their own report.

17 THE COURT: Is there a document now that explains  
18 the computation of this amount of the damages? The damages  
19 arise from these two things, the options and the stock?

20 MR. HANNON: No. There's no one single document  
21 that I can show you that has the precise computation. We  
22 could provide that, but we've not -- there's no document like  
23 that that exists.

24 THE COURT: Okay. All right. I want to think  
25 about this a little bit. I think this is a -- I just want

1 to -- I want to think about it. That's why I started with  
2 it.

3 I think the three LinkedIn documents, they strike  
4 me as a different category. As I understand it, you said two  
5 things for them, Mr. Hannon, but I'm not sure you can get  
6 both things out of those documents. One thing you said is  
7 there are other people working remotely, and that seems to me  
8 something that you could ask people anyway. For those  
9 purposes, like maybe they should have been disclosed earlier,  
10 I'm not sure. It's a duty to supplement. Maybe you just  
11 learned about it. I don't view it as a big issue.

12 I think that you're on notice now that he's going  
13 to say those three people work remotely. And he could ask  
14 anybody, I think -- or not anybody, but within the zone of  
15 relation of the kind of work she did in the company, or  
16 whatever, she could ask if anyone else was -- he could ask if  
17 anyone else was working remotely.

18 You cited for also that they're working remotely  
19 well. I don't think that their LinkedIn -- like I don't  
20 think their LinkedIn can be introduced for that purpose, and  
21 I'm not even sure whether the LinkedIn is admissible to  
22 establish that they're working remotely or what. Because  
23 it's not the defendant's LinkedIn. And these are employees,  
24 and their LinkedIn isn't really their official page on their  
25 website. So I don't even know if their LinkedIn pages are

1 admissible.

2           But as to them working well, I don't -- well, I  
3 mean, Dr. Menninger's LinkedIn, if she had one, presumably  
4 might have said she was working remotely, but I don't know  
5 that the defendants could infer or argue that the LinkedIn  
6 establishes that she was working -- or you could argue that  
7 she was working well from that.

8           And people are on LinkedIn, you know, right up to  
9 the moment they're fired. And that doesn't really prove  
10 anything about that.

11           So I don't know what -- I don't know if it's  
12 admissible or not. I'm not excluding it because of the  
13 timing of the disclosure. Because I think the only thing it  
14 really stands for is it's a piece of -- as I read it, you're  
15 saying to them, "I learned this information about these three  
16 people, that they are working remotely," and that's a fact  
17 that, like, you can get at in the trial, with or without  
18 those documents. Whether those documents are actually  
19 admissible, I'm not sure. I don't think so, but I'm not  
20 ruling on that now. But I don't see how they're admissible  
21 to show that they're working well or successfully.

22           MR. HANNON: You're right.

23           THE COURT: Okay. Okay. So the other part of the  
24 motion, which is the larger and relates to this other issue,  
25 I just want to think about it a little bit.

1           Let me run through all the other motions. And I'm  
2 happy to hear you about them, but let me just maybe, for the  
3 interest of time, first, give you some sort of overview  
4 thoughts. So the first -- just going through them in order  
5 of docket number.

6           Number 100, the motion to exclude unrequested  
7 accommodations. In some sense, the motion is moot. You both  
8 agree with what I said in the footnote, which is that the  
9 plaintiff is limited to those that are sufficiently  
10 requested. And the real question is what's sufficiently  
11 requested.

12           The -- there are two aspects to that that seem  
13 like, from what -- the opposition, that might actually be in  
14 dispute. That's what I took. Those are the things that you  
15 think. One is, are plaintiff's -- Dr. Menninger's repeated  
16 request for more detail about items 2 to 4 of Mekerri's  
17 February 6th e-mail a sufficient request for accommodation  
18 such that it goes to the jury?

19           I think that there's -- the way I think about this  
20 issue is there are some things that are, like, so far beyond  
21 the bounds that I would rule them out essentially on a  
22 preliminary -- like 104 basis, that no jury could reasonably  
23 conclude that's a sufficient request for an accommodation.

24           On the other hand, anything that's closer, like the  
25 jury gets to decide whether it's a sufficient. And if

1 there's a dispute about it, there will be evidence. And the  
2 jury -- I can instruct the jury what is a sufficient request.  
3 And then they'll decide. And only those that are sufficient  
4 will they consider in terms of requests.

5 So I'm -- that one I'm inclined to leave to the  
6 jury, I'll just tell you.

7 As to conducting a good-faith investigation into  
8 the internal complaints, whether that's a sufficient  
9 request -- is by that you mean, Mr. Hannon, is her request  
10 for an investigation itself a request for a reasonable  
11 accommodation?

12 MR. HANNON: Yes. And not just the initial  
13 request, but the communications and the context of why she  
14 was asking for the investigation and what she wanted  
15 investigated. And I'm not saying that every time someone  
16 requested an investigation, it's a request for accommodation.  
17 My argument would be that based upon what they knew at that  
18 point about her disability and about the way different things  
19 would negatively impact her health, that a reasonable jury  
20 could find that they should have recognized that this is  
21 something that she needed as -- in order to sort of fully  
22 enjoy the -- whatever the language is in terms of what gives  
23 you an accommodation.

24 THE COURT: All right. I'm going to -- probably  
25 going to think about all of these things.

1                   And I'll hear you. Go ahead.

2                   MR. CURRAN: Thanks, Your Honor. I don't know that  
3 there's any evidence or any indication that I've ever seen  
4 that she asked for an investigation. She said, "I have this  
5 complaint," and the company performed an investigation, as  
6 it's required to do under the law. So I'm not sure that  
7 there was ever even a request for accommodation. It doesn't  
8 sound to me, based on what I know about the case, like there  
9 was one. In terms of asking for an investigation, that was  
10 not something that I think there's any indication that was  
11 ever requested.

12                  Also, as I'm sure Your Honor knows, there has to  
13 be -- the request has to --

14                  THE COURT: Never be so sure. I appreciate the  
15 thought, but never be so sure that I know.

16                  MR. CURRAN: Well, I was looking at *Jones v.*  
17 *Nationwide Insurance*, a First Circuit case, and it says that  
18 the request has to not only provide notice of the conditions,  
19 but of a causal connection between the major life activity  
20 that it limited and the accommodation sought. And there was  
21 never any -- there wasn't even a request, but there certainly  
22 wasn't any linking between, "I need this -- I need you to do  
23 an investigation so that I can -- because of my anxiety, so  
24 that I can do my job."

25                  THE COURT: Okay. I'm going to think about this.

1 I think the general rubric that I'm thinking about is that  
2 there needs to be some basis that, like, preliminary I could  
3 look at to say that I might be able to infer sufficiency.  
4 And if this is, then I'm likely to let it in and give it to  
5 the jury. But if there isn't, then no.

6 As to the two specific examples, I'll think about  
7 it. And -- but that's to the extent there are other issues.  
8 To the extent the motion affects other issues, that's how I  
9 would think about it, and we'll just resolve it as we go.

10 The second motion to exclude compensation date of  
11 other employees. As I understand this, what -- what I  
12 understand is Mr. Hannon's not seeking generally to put in  
13 how much other people are paid. What he's seeking to put in  
14 is the -- well, first, the people who are at a similar level  
15 or held the position she held after she was left or  
16 terminated, what kind of increases they received in terms of  
17 percentage increases? Were those bonuses and equity plan,  
18 and were those either awarded to people because of the level  
19 that she was on, and therefore, it would support a reasonable  
20 inference that the jury could choose to draw that she would  
21 have received them, or were they somewhat discretionary, but  
22 awarded to people who had the same kind of performance level  
23 reviews at her?

24 Is that pretty much -- that's my sense of what  
25 you're looking for.

1                   MR. HANNON: Correct.

2                   THE COURT: So as to that, why wouldn't that be  
3     permissible? Which is different than how much does her  
4     boss make? Which I don't see -- I don't think he's asking  
5     for that. And that's -- wouldn't -- there wouldn't be  
6     evidence of that.

7                   MR. CURRAN: Okay. Well, that was one of the  
8     things that we were trying to exclude. So that's helpful to  
9     know.

10                  THE COURT: What I'm thinking it's narrowed to is  
11     the percentage increases people at her level received, or  
12     people -- if there's some categorical -- like every federal  
13     employee on January 1st received an X percent increase,  
14     right? So if there's things like that, that seems fair in  
15     terms of her front pay argument.

16                  MR. CURRAN: If there are things like that. My  
17     concern is that, you know, to the extent it's based on  
18     performance, she worked there for two and a half years. I'm  
19     not sure there's enough of a -- of a foundation for anyone to  
20     say that she was going to continue, whatever her performance  
21     reviews were, and they varied. I mean, it was good the first  
22     two years, bad the second year -- not bad, but okay. The  
23     second year, it went down.

24                  THE COURT: Yes.

25                  MR. CURRAN: I don't think there's any basis to say

1       that she would have had any particular performance level  
2       going forward, so I think the foundation issue would be  
3       difficult.

4                     THE COURT: For the discretionary kind of things,  
5       as opposed to bonuses, equity, and percentage increases  
6       awarded either across the board or to people in her category.

7                     MR. CURRAN: To the extent that, yeah, things would  
8       have been -- to the extent it showed --

9                     THE COURT: So I guess what I have to say about  
10      that, to some extent, that depends on the facts.

11                  MR. CURRAN: Right.

12                  THE COURT: The closer you can tie it, and the  
13      better your chance. The further more removed it is, the  
14      harder it is. And I think that would be the line. I don't  
15      think I could -- excuse me -- resolve that now. But as to  
16      how much did the boss make or how much did other people make,  
17      it's moot because Mr. Hannon's not offering that.

18                  MR. CURRAN: Understood.

19                  THE COURT: So the only thing that he's seeking is  
20      these three things. And what I understand the nature of the  
21      real issue now between the parties is the discretionary  
22      increases, the ones that weren't automatic to her category or  
23      automatic to every employee. And that, I think, depends on  
24      sort of enough evidence to support a reasonable inference if  
25      the jury chose to offer it -- draw it, that it would apply to

1       her, given how you have shown that it applied to people who  
2       were similarly situated. And the closer they are to her, the  
3       more likely they could draw the inference. Okay.

4                  As to -- we talked about the motion to exclude  
5       documents. The motion to bar the adverse -- an adverse  
6       inference on Mekerri's absence.

7                  I think that's unopposed?

8                  MR. HANNON: It is, Your Honor.

9                  THE COURT: M-e-k-e-r-r-i, is that how you spell  
10      his name?

11                 All right. Fine. So that's allowed as unopposed.

12                 The motion to exclude stray remarks.

13                 That one is number 105, Kellyann.

14                 The motion to exclude stray remarks by  
15       nondecision-makers, number 107. So what I understand is  
16       there's really one thing that you want. And from there,  
17       they -- defendants cited a couple comments. They had an  
18       e-mail -- some of it is repeating. But there's one  
19       particular comment that I understood you to want. It was the  
20       one you mentioned in your opposition.

21                 MR. HANNON: Yeah. I think there's really two. So  
22       there's the statement directly by Dr. Fikry, the caption of  
23       his e-mail, where he says, "What's the timing of the exit?"  
24       But then there are -- in other communications there are  
25       statements attributed to him, where he's inquiring, following

1 up asking.

2 And the importance there, since we already know  
3 what he's asking about, really the significance there is what  
4 their response is to the question. It --

5 THE COURT: The person's response to the question.

6 MR. WATSON: That's exactly right.

7 THE COURT: That -- I don't think that's a stray  
8 remark. That's -- he's the boss of her boss. And her boss  
9 is somebody involved in the decision, as I understand it, or  
10 the -- and the issues. And so I think that it strikes me as  
11 close enough to allow it in.

12 And the jury might -- I'm not saying that it is --  
13 I'm not saying he is a decision-maker and they have to factor  
14 it in that way, but it seems to me that it's close enough  
15 to -- that it would not be excluded as a stray remark. But  
16 I'm happy to hear you.

17 MS. MANDEL: Your Honor, I just wanted to add one  
18 important fact there. Dr. Menninger was not terminated. She  
19 went out on a leave --

20 THE COURT: Right.

21 MS. MANDEL: -- June 3, 2018. And then she stayed  
22 out on leave for eight months. So it's not a situation  
23 where, say, her boss terminated her, and her boss's boss had  
24 been asking --

25 THE COURT: Right. But she's claiming that in this

1 time period, she was discriminated against. Like I  
2 understand her claim -- the discrimination claim in part to  
3 be: I told my employer I had these two disabilities. That's  
4 her position. And that then they started looking -- their  
5 response was, "Let's get rid of her." And my understanding,  
6 which isn't necessarily -- I'm not saying that's -- in no way  
7 am I saying that's the truth.

8 But I think that's fair as part of what your theory  
9 is?

10 MR. HANNON: Yes, Your Honor.

11 THE COURT: And he's the boss's boss. And my  
12 understanding, in part, of your theory, is that her  
13 performance was declining before you knew anything about her  
14 disability, and you were just -- there were two things going  
15 on. Her performance was not on the rise anymore, but it was  
16 dipping; and second, there were things going on at the  
17 company that were causing changes that weren't specific to  
18 her that were -- that were going to apply to her, but they  
19 weren't adopted because of her.

20 And that then those, like, led to this, like -- and  
21 the -- the explanation might be that the people in the  
22 company's view was these are essential functions of your job,  
23 and we don't think we can accommodate exempting you or  
24 accommodate them in some other way. Right? And that -- and  
25 of course -- or any accommodation we made would be an undue

1 burden.

2 So that might be, I think -- but it's still during  
3 that time period and fits with -- could fit with both  
4 theories.

5 That's fair, in part, as to what I -- am I  
6 understanding of, in part, your theory, correct?

7 MS. MANDEL: Actually, Your Honor, our theory and  
8 what we think the evidence will show is slightly different,  
9 which is that this really wasn't a case that was very much  
10 about Dr. Menninger's performance at all.

11 THE COURT: All right.

12 MS. MANDEL: Some of those issues had come up in  
13 2017. Those issues continued into 2018. But, in fact, these  
14 questions were about something completely different. Which  
15 is that after January 2018, when Dr. Menninger said, "I have  
16 these disabilities, and I can't do these job functions," that  
17 that became a challenge for the company to understand. Is  
18 she going to stay in this job? Is she not going to say in  
19 this job? We need someone in this job from a licensing  
20 standpoint, so we're just trying to understand what she's  
21 saying. So. In fact, Mr. Fikry's comment were exactly that,  
22 trying to understand.

23 THE COURT: And I have no doubt you will very ably  
24 tell the jury that. I think that's why -- I can see how the  
25 statements potentially support your position, though you

1       might prefer to support your position without them. But I  
2       think they support -- potentially support Mr. Hannon's  
3       position. And they don't --

4                 I think of stray remarks as if, you know, the  
5       person who runs -- who reported to her and runs some -- one  
6       of the labs just makes a comment to a co-worker, and neither  
7       of them are involved in these reasonable accommodation  
8       decisions or anything else, about whatever, a comment that  
9       could be inferred to be evidencing bias against people with  
10      social anxiety disorder or disabled people generally, that  
11      would be a stray remark. It wasn't said to the  
12      decision-makers. It wasn't someone part of the process.  
13      There wasn't evidence that they heard it. I think that's --

14                 But he's in a different category. And the comment  
15      is in the time period. And so I think that that motion is  
16      denied.

17                 The motion to exclude evidence about dismissed  
18      claims. So again, I think this comes down to really what the  
19      evidence is. You both agree to the obvious, which is that  
20      evidence that is only relevant to the dismissed claim is not  
21      admissible. And evidence that's relevant to a live claim is  
22      not inadmissible, because it's also relevant to a dismissed  
23      claim. But it can only be offered if it is relevant to a  
24      live claim.

25                 That seemed like the evidence is partly about the

1 evidence about a potential departure, and that might be what  
2 you're all thinking about right now. I'm not sure if that's  
3 the only thing or if I'm right about that.

4 Is that really what's in play in the motion?

5 MR. CURRAN: I think it's one of the main things,  
6 Your Honor. And so just to --

7 THE COURT: Explain.

8 MR. CURRAN: Just to recap a little bit.

9 So in the summary judgment decision, you dismissed  
10 the claim that the supposed, you know, scheme to get her to  
11 leave was an adverse action in the context of the  
12 discrimination claim, because you held that no reasonable  
13 jury could find that it was.

14 And then with respect to the retaliation claim, you  
15 looked at a specific event that occurred in February, which  
16 was the meeting between Mr. Mekerri, one of the HR people,  
17 and Dr. Menninger, where the HR person allegedly said  
18 something about -- you know, offered her a severance package  
19 and said, "Maybe you can work as a consultant or something."  
20 And you ruled that that could be an adverse action for the  
21 retaliation claim.

22 THE COURT: Say that again? I ruled that -- oh,  
23 that the statement at the beginning of the meeting, "Do you  
24 want to leave," as Dr. Menninger's version, that could be an  
25 adverse action.

1                   MR. CURRAN: That could be an adverse action --

2                   THE COURT: For retaliation.

3                   MR. CURRAN: -- for retaliation purposes. And so,  
4 you know, I suppose, that's different than saying that, you  
5 know, evidence of a scheme to get her to leave is an adverse  
6 action for purposes of the retaliation claim.

7                   I'm not sure how relevant those e-mails are to, you  
8 know -- to the -- you know, what was said in February of  
9 2018. To the extent they are, we would argue that it's  
10 unduly prejudicial, because a jury could be confused into  
11 thinking that those -- there some evidence of a scheme was,  
12 you know --

13                  THE COURT: Not with my jury instructions written  
14 at a Ph.D. level.

15                  MR. CURRAN: Well, yes, jury instructions could  
16 potentially --

17                  THE COURT: So it's -- the focus is on --

18                  MR. CURRAN: Fikry.

19                  THE COURT: -- Fikry e-mail and some other related  
20 e-mails?

21                  MR. CURRAN: Yeah. I believe that there are some  
22 other e-mails, not just the Fikry ones.

23                  THE COURT: All right. I want to think about --

24                  Anything you want to say about that, Mr. Hannon,  
25 beyond what's in the papers?

1                   MR. HANNON: So two points. One is I -- I don't  
2 think that your ruling on the summary judgment is as narrow  
3 as defendants argue. I don't think you argue that only one  
4 particular instance --

5                   THE COURT: Decided. I don't argue.

6                   MR. HANNON: I'm sorry?

7                   THE COURT: Decided. I don't argue.

8                   MR. HANNON: I'm sorry.

9                   THE COURT: It's okay.

10                  MR. HANNON: I was thinking ahead here.

11                  The issue that you decided was that only one  
12 particular instance could have been an act of retaliation.  
13 My recollection is that you dealt generally with the theory  
14 of the scheme to coerce to quit. So all of the evidence of  
15 that scheme, I would suggest, is admissible for that reason.

16                  But even if you had limited it to just to one  
17 event, certainly the fact of all of these other things that  
18 happened both before and after at least is some evidence of  
19 what they were attempting to do in that February 28th meeting  
20 and further what their motive and intent was.

21                  As Your Honor pointed out, there is a factual  
22 dispute in terms of what actually happened at that meeting,  
23 and whether or not there was, indeed, the scheme to get her  
24 to quit. And if that was their aim, that would certainly be  
25 pertinent to the jury in determining who to believe as to

1 what happened.

2 THE COURT: Okay. I want to think about that.

3 The next one is number 111, the motion to exclude  
4 evidence, the relationship. That's agreed upon. I'm just  
5 allowing that motion. It's without prejudice, Mr. Hannon, to  
6 what you suggested, which is if you think it becomes  
7 relevant, bring it up outside the presence of the jury and we  
8 can talk about it and we'll see. But for now, it's excluded.

9 And kudos for reserving it. It's hard to see how  
10 it would be relevant, but I'm happy to hear you if you think  
11 it is.

12 The motion to exclude the voluntary  
13 self-identification answer. So one question that I have is,  
14 as I understand it, Dr. Menninger's position is, I was then,  
15 when I filled out that form; I was at the time of these  
16 events in 2017/2018, suffering from this disability. That's  
17 the position in court today. And there's no dispute that the  
18 defendants didn't know, before she sent that January 12th  
19 e-mail. Right? You're not claiming they knew before then.

20 MR. HANNON: Correct.

21 THE COURT: And you're not saying your client knew  
22 before that. Like the first anyone in your client knew was  
23 before they got that e-mail, right?

24 MS. MANDEL: Correct.

25 THE COURT: Okay. So I don't think you need it to

1 show that -- to prove that you didn't know before  
2 January 2018, because they're not going to -- he's not  
3 claiming it. It's practically stipulating that -- they're  
4 going to argue the first time.

5 So the other part of it, if there's something about  
6 that, I'll hear you. But it seems to me the real issue is  
7 credibility.

8 MR. CURRAN: I think that's right, Your Honor.  
9 Although, I do think that, you know, we certainly intend to  
10 offer evidence. It hasn't been officially stipulated to that  
11 we didn't know, as far as I'm aware.

12 THE COURT: You're going to elicit from witnesses  
13 that --

14 MR. CURRAN: Yeah, I want people to say, you  
15 know --

16 THE COURT: "Did you know." Right. And I think  
17 that's fair. You can do that.

18 But my only point is that the -- if he crosses  
19 those witnesses to challenge those statements, it could be  
20 different. But it's hard to see how Mr. Hannon is going  
21 to -- why or how he would do that. So it strikes me the real  
22 weight and force of the document is not to have that extra  
23 piece of paper when she's concedes -- she's going to concede,  
24 she's going to say on the witness stand, "This e-mail is the  
25 first time I said it," that no witness is going to say they

1 learned about it before. He's not going to cross anyone and  
2 challenge that.

3 It's really -- the significance of that document,  
4 it comes down to the credibility that she said "no" at a time  
5 when she says now she was then disabled. Right?

6 MR. CURRAN: That's correct, Your Honor.

7 THE COURT: And her credibility is an issue, like,  
8 obviously, in the case. I don't mean that there's anything  
9 wrong with her credibility, but that's obviously something  
10 that the jury is going to have to evaluate.

11 So why wouldn't it be -- I guess one argument is  
12 the law about the regulation. You can tell me something  
13 about that. I haven't dug into that enough to rule on that  
14 now. And I'll look at that, and obviously if the regulation  
15 limits it in some way, then that might be different. I'm not  
16 saying it does or doesn't. But why wasn't it -- why wouldn't  
17 it be relevant for credibility?

18 MR. HANNON: Because it would not be a permissible  
19 inference for the jury to draw from her filling that out,  
20 that in some way she was doing something that's different  
21 from what she's saying now.

22 The form doesn't define what a disability is. It  
23 doesn't explain the very technical definition in terms of the  
24 now fairly low bar, after the ADAAA, in terms of what  
25 constitutes a disability under the law. And actually, if you

1 look at the form, it has some examples there, which are very,  
2 very different from the disability that Dr. Menninger had and  
3 has. So that's sort of one issue, is whether or not it would  
4 even permissibly support an inference that she was, in some  
5 way, not telling the truth.

6 Another issue concerns, really, the sort of  
7 confusion and undue prejudice to be drawn from all of this.  
8 As I think some of the case law that we cite in our brief  
9 points out, you know, there's an inherent reluctance on the  
10 part of employees to disclose disabilities. That's why the  
11 law says what it says in terms of the limited use of these  
12 documents. By permitting employers to have employees fill  
13 these things out, it's not intended to be a "gotcha." It's  
14 not intended to be something that you can later say, "Ah-ha,  
15 you didn't tell us then, you can't tell us now."

16 And that's another reason why it's not reliable,  
17 and it's also a reason why it's prejudicial. To the extent  
18 that a jury looks at this and says, "Well, it's unfair that  
19 Dr. Menninger didn't tell them at the outset," she had no  
20 obligation to tell them at the outset. And there are a host  
21 of inferences that --

22 THE COURT: Well, that would be a different thing,  
23 right?

24 MR. HANNON: Right.

25 THE COURT: This -- like to say that her failure to

1 tell them is -- somehow prejudiced them is different. You're  
2 not claiming any damages or anything wrong done by them  
3 before January 12th. That would be a different --

4 Who gets the form? Is it submitted directly to the  
5 government, or does the employer get it?

6 MR. CURRAN: I believe it goes to the employer.

7 THE COURT: So somebody in HR, or something,  
8 typically would receive it back.

9 MR. CURRAN: Yeah. My understanding is that one of  
10 the purposes of it is to allow the federal contractor to  
11 evaluate their efforts to recruit people with disabilities.

12 THE COURT: And when they -- when the contractor --  
13 so it's a requirement that federal contractors do this.

14 MR. CURRAN: That's my understanding.

15 THE COURT: And when a federal contractor --  
16 presumably, they provide this to the government, in some way,  
17 at least in a -- like we have 100 -- we hired 100 people this  
18 year. The next percent said yes to this question.

19 MR. CURRAN: Yeah. I believe they're required to  
20 report statistics. I don't think they send the actual forms,  
21 I think they provide statistics to the government.

22 THE COURT: Suppose somebody says yes to this form,  
23 and they check off -- they don't have to check off, I guess,  
24 the particular disability, but they say yes. Does that --  
25 like how is that known to people? Other than the statistical

1 importance to the government, what, if anything, does the  
2 company do with that?

3 MR. CURRAN: I don't know the answer to that  
4 question, but I assume that, you know, if this was on the  
5 other side and the plaintiff had checked "yes" and the  
6 company was claiming that they didn't know that she was  
7 disabled, then this would be evidence that the company knew  
8 that she was disabled, you know, and that they had some  
9 obligation to follow-up.

10 THE COURT: Somebody in a wheelchair and works  
11 in -- like you can't move this person's office to the second  
12 floor in a building with no elevator.

13 MR. CURRAN: Right. Or something that's visible,  
14 and the person puts on the form, "Yes, I have a disability,"  
15 that, potentially, could be argued to raise a -- an  
16 obligation on the part of the company to follow-up and say,  
17 which, "You know, does this disability, you know, interfere  
18 with your ability to do the job?" or something like that.

19 THE COURT: Okay. Anything else you want to add,  
20 Mr. Hannon?

21 MR. HANNON: Disability is a -- a bit of a loaded  
22 word, and certainly to anybody filling out an employment  
23 application, I -- I think there are a lot of disabled people  
24 who don't identify as disabled. And for the jury to draw any  
25 kind of an inference based upon the fact that when

1 Dr. Menninger got this job she did not identify herself as  
2 disabled would not be a proper inference that wouldn't be  
3 supported by the evidence.

4 And there are a host of other inferences that the  
5 jury could draw from this evidence which would be clearly,  
6 impermissible. And if this is offered, it needs to be  
7 offered with a number of instructions, concerning what the  
8 purpose of the form is, concerning what it can properly be  
9 used for, concerning the fact that the failure to disclose  
10 this doesn't change PPD's obligations. And I would submit  
11 that we would spend more time instructing the jury on this  
12 particular point than this has any relevance whatsoever to  
13 the claims.

14 THE COURT: Okay. I want to think about this one,  
15 too.

16 Then there's the motion to exclude the medical  
17 expert testifying to what was not in his original report.  
18 And that doesn't -- and that applies to the time period of  
19 his original report. That's what I understand the scope of  
20 the motion to be.

21 MR. HANNON: Yeah. Whatever is new, we agree  
22 that's fair game. But in terms of new and --

23 THE COURT: Why can't he, though -- as I understand  
24 the facts, everybody -- both sides had experts, did expert  
25 reports. Presumably you might have done depositions or at

1       least had the opportunity. And then in January, there were  
2       some more medical records that you disclosed. And then in  
3       early/mid January, a little bit, pretty quickly thereafter,  
4       your expert did probably a short -- I haven't read it --  
5       supplemental expert report saying, "I've reviewed these  
6       additional records," and either, "I stand by all of my  
7       opinions, or I modify them however I modify them. Or I  
8       augment them however I augment them."

9                 And two weeks later, their expert says, "I've  
10      reviewed those extra things," and says, "this is" -- like, "I  
11      reaffirm, and this is what I do. And I have these -- one  
12      opinion about the caliber of certain reports, of certain  
13      medical records or documentation, and one about sort of this  
14      control," which you point out.

15                 But why can't they revisit what they've done about  
16      the original time period? They could have a new view based  
17      on additional evidence.

18                 MR. HANNON: If -- if the expert said that these  
19      new records led him to form a conclusion, then I think you're  
20      right, that that's fair game. He doesn't say that. What he  
21      says is he specifically attributes his opinion not to these  
22      new records, but to prior records.

23                 And it is -- it's a -- it's a significant change  
24      from what his testimony was before. We did oppose him -- I'm  
25      sorry, we did depose him. I specifically asked him at his

1 deposition whether or not he had the opinion that she was  
2 faking it, and he said "no." And now, in their expert  
3 disclosure, they have, under the guise of a supplement,  
4 really had him go back in time to the start and now offer a  
5 whole new category of opinion, really without even explaining  
6 what necessarily the, you know, sort of opinion is. It's  
7 somewhat vague in and of itself.

8 THE COURT: So what you're really saying is that in  
9 the second page of his opinion, in the part that  
10 starts, "Overall," you're saying he's just saying, "By the  
11 way, now I have a new opinion or additional opinion about  
12 her," and it's based on all the old records. And that  
13 happened after the deposition, and that's not fair.

14 MR. HANNON: Right. If he had an opinion based  
15 upon the old records, he was obligated to give that opinion  
16 at his first -- in his first report. And the idea that, you  
17 know --

18 THE COURT: And you're saying this is different  
19 than if he had read these new records and said, "I've read  
20 these new records. And now in light of these new records, I  
21 reread the old records. And the combination of the two  
22 causes me to come to the paragraph, and it's given me an  
23 insight that I didn't have before," then he could do that.

24 MR. HANNON: I think he could.

25 THE COURT: And you're saying but that's not what

1           this is?

2           MR. HANNON: Correct.

3           THE COURT: What do you say?

4           MS. MANDEL: Your Honor --

5           THE COURT: Just so we're clear, I understand this  
6 to be a dispute not about the entirety of his supplemental  
7 report, but basically just about, on the page 2, the  
8 paragraph that begins -- that's really two paragraphs, "As  
9 mentioned," or, "Overall." Those two paragraphs?

10          MR. HANNON: I believe that's right, Your Honor.  
11          It's the issue about, I want to say, faking it. That's not  
12 the medical term.

13          THE COURT: Malingering.

14          MR. HANNON: Malingering, yeah.

15          THE COURT: But that's the paragraph overall, about  
16 control and dictating.

17          MR. HANNON: Correct.

18          THE COURT: Right.

19          MS. MANDEL: Your Honor, I think what you just said  
20 a moment ago is exactly right, which is that Dr. Kelly, in  
21 this paragraph, seems to be going back and saying, "If we  
22 look back, now we have a retrospective that goes from 2017  
23 until now, and I see this pattern that I'm describing." That  
24 is not in any way inconsistent with what he said earlier, and  
25 it's not based only on records that he had at the time of his

1 original report several years ago. It's saying, "Now I have  
2 a fuller set of data."

3 In fact, the data in this case that relates to the  
4 time period following Dr. Menninger's employment really only  
5 runs from 2018-2019 until now. So at the time expert  
6 discovery was done, not as much of that time period has  
7 passed. There's now a bigger picture, and he's describing a  
8 pattern that he saw. And in fact, that's exactly what he  
9 does in this paragraph.

10 And it's really no different from what  
11 Dr. Summergrad, who is plaintiff's expert, did in his report,  
12 which is to talk about looking at the documents and the data  
13 and seeing a direct line back to 2018. That's exactly what  
14 Dr. Summergrad did. Right?

15 So I think this is equivalent. It's looking at the  
16 totality of the information in front of me. I am now looking  
17 back at everything, including information that we've just  
18 learned from 2021 and 2022 and rendering an opinion about  
19 that. It's not a new or different opinion about the earlier  
20 documents.

21 MR. HANNON: I respectfully disagree and -- but  
22 there might be an ambiguity here, in terms of whether or not  
23 this is something new that he just saw now, based upon these  
24 new records that he hadn't seen before, versus something that  
25 he saw before but didn't put it in his report.

1                   And I would suggest that the appropriate way to  
2 address that would be to provide an opportunity for voir dire  
3 of the witness prior to his testimony to determine what of  
4 those two it is. Is this something new that he just found  
5 out, based upon what he read in these new supplemental  
6 documents? Or --

7                   THE COURT: You mean in the sense that he says  
8 either, "I didn't see a pattern," or, "I perceived the  
9 possible pattern, but not sufficient to opine on to a  
10 reasonable degree of medical certainty. And then when I read  
11 these additional records, it was either sufficient pattern or  
12 for the first time I saw the pattern because I had a bigger  
13 time scope. And if it's either of those, he had gets to do  
14 it. It resolves the ambiguity. If he says, "Look, this is  
15 just based -- it was there before," then he doesn't.

16                  MR. HANNON: Right.

17                  THE COURT: What do you say about that?

18                  MS. MANDEL: Your Honor, respectfully, that sounds  
19 like what we have here is a plaintiff who disclosed these  
20 documents less than two months before trial, even though  
21 plaintiff had them in her possession on a rolling basis for a  
22 very a long time, produces her expert's view of these  
23 documents. Then we produce our expert's view of these  
24 documents. And this was all a rush before trial due to what  
25 plaintiff produced. There's no time for supplemental

1 depositions, additional inquiries about what these reports  
2 might mean. And now approximate plaintiff is trying to get a  
3 quick bite of the apple on that right before trial.  
4 Respectfully, it seems a very inappropriate way for plaintiff  
5 to be handling these late produced documents.

6 THE COURT: I'll think about it. Okay.

7 Anything else either of you -- I'll resolve, before  
8 the end of the day tomorrow, a short order resolving all the  
9 motions in limine, other than the easy ones that I took care  
10 of today.

11 Is there anything else either of you want to  
12 address?

13 MR. HANNON: Nothing here, Your Honor.

14 Oh, actually, just one thing to mention. So we did  
15 submit a witness -- I'm sorry, exhibit lists with our  
16 pretrial memo. We've been working to take out some  
17 duplicates on that. I think there were some things that were  
18 unintentionally excluded, as well. So anyhow, long story  
19 short, we're going to be submitting a joint amended exhibit  
20 list, hopefully end of day tomorrow.

21 THE COURT: Fine.

22 MR. HANNON: But I think we're on the same page  
23 regarding that.

24 THE COURT: Okay. Just I haven't -- I'm not even  
25 sure I have the exhibits, but I haven't reviewed them. And

1 with respect to the contested exhibits, I can't -- I don't  
2 intend -- though there weren't -- there are still a fair  
3 number. I certainly can't rule on them without reading them,  
4 having them. I don't have them, that's fine. You don't have  
5 to give them to me right now. But my thought, generally, is  
6 to rule on them as we go.

7 And to the extent that you can preview those issues  
8 for me, like what's coming up on Monday, Monday morning  
9 before we get the jurors. Or you can preview it Tuesday  
10 morning, what's coming in Tuesday. And if you think you're  
11 going to preview Tuesday morning, give Ms. Belmont or me the  
12 documents Monday afternoon or evening so I can read them. To  
13 the extent that it's the kind of thing that that would be  
14 useful to do, that's helpful. And that will speed the  
15 resolution and let me talk to you. It will avoid having  
16 lengthy sidebars, maybe even avoid any sidebars. In a  
17 perfect world, we won't have any. That's my suggestion about  
18 the ones that are contested.

19 Anything else for you?

20 MS. MANDEL: Your Honor, two quick things. The  
21 first is just to draw your attention, in the pretrial memo,  
22 it was not a contested issue at all, but just one particular  
23 issue with a witness who will certainly be testifying in a  
24 second week. So it's not an urgent issue.

25 THE COURT: Oh, the one about coming up -- yeah,

1       that's fine. I have no problem with that. Happy to do that.  
2       I really leave that to all of you. I won't remember that,  
3       necessarily. But so just -- I think what you -- what you  
4       should try to do is either call that witness at 9 o'clock,  
5       like first thing, and then we'll just put the witness on the  
6       witness stand before the jury comes in. Or, you know, we  
7       could call -- I'm happy to say, like, we break at 11:00 one  
8       morning, and you're in the middle of a witness, we could stop  
9       that witness, have him come in, have him start, you know, so  
10      then he can get settled in the witness box during the break.  
11      And then when he's done, he leaves, and we could resume with  
12      the other witness. I have no problem doing that. I suggest  
13      that the two of you figure it out.

14                  The only issue -- how long is the witness going to  
15      testify for?

16                  MR. CURRAN: I don't anticipate more than 30  
17      minutes.

18                  THE COURT: So here's the -- total or just direct?

19                  MR. CURRAN: I would think so; I can't predict the  
20      cross.

21                  THE COURT: More than 30 minutes of cross?

22                  MR. HANNON: Probably not, no.

23                  THE COURT: So the one issue -- the practical issue  
24      that you're going to face is if you call him at 9:00, he's  
25      going to be done before the break. And if you call him --

1 it's easy to get him in the box with the jury out, but then  
2 he's done. And if he's going to be -- it sounds like he's  
3 going to be 45 minutes, you know, to an hour, that isn't  
4 going to take us to another ordinary break time.

5 And so how hard is it for this person to move?

6 MS. MANDEL: Your Honor, it's not so much -- he's  
7 indicated to us that he'll be able to get in and out of the  
8 witness box without a lot of assistance. It just depends on  
9 how he's feeling that day. It's postsurgery for him. I  
10 think the real question is we just wouldn't want any  
11 prejudicial assumptions made by the jury about his, sort of,  
12 slow movement.

13 THE COURT: Who is the witness?

14 MS. MANDEL: It's our expert psychiatrist.

15 THE COURT: Oh, Kelly. Oh.

16 What kind of -- like did he have hip surgery or  
17 back surgery?

18 MS. MANDEL: He's walking -- after some surgery,  
19 he's walking with a cane to assist with his mobility while he  
20 heals. So I think the concern is that it might affect the  
21 view of his sort of stature.

22 THE COURT: He doesn't need to listen -- you're not  
23 planning to have him listen to testimony before he testifies.  
24 He's just testifying, coming and going for testimony?

25 MS. MANDEL: Yes.

1                   THE COURT: He won't be coming -- he comes later in  
2 the case.

3                   MS. MANDEL: Correct.

4                   THE COURT: So let's think about that. Here's a  
5 couple of thoughts that you could think about. One is, he  
6 could -- you might be using the TV, right? To display  
7 things. We could have the TV moved. See that chair over  
8 there in the corner? Maybe there's one, actually, right next  
9 to the witness. He could also just step down and sit in the  
10 chair right there and watch. He's free to do that. And I  
11 have no problem with that. And he doesn't have to go too  
12 far.

13                  We could potentially break. It's a lot to send  
14 people in and out. I'm not -- kind of like, maybe, like the  
15 day he's going to testify, I don't know how, like -- how  
16 difficult -- I don't have a sense of how hard it is for him  
17 to move with a cane, like how weak it would make him look.  
18 Like I don't -- just that he's walking with a cane, it  
19 doesn't really bother me, and I'm not really sure why it  
20 would bother the jury.

21                  MS. MANDEL: I think, Your Honor, part of this is  
22 that it's a little hard to know day-to-day. He's in the  
23 period recovering from surgery, so I think it is a little bit  
24 difficult to predict. So we wanted to --

25                  THE COURT: So I'm happy, generally, to accommodate

1 it. And I'd say let's see. And it's easy to accommodate the  
2 first part; take him out of order, he starts at 9:00 or  
3 11:00, or what have you. We could think about what to do for  
4 him to get out of the witness box.

5 I'm not -- I don't want to make it difficult. I'm  
6 happy to try to accommodate. To break -- to send him out is  
7 to spend 15 minutes. Right? It's not -- even if he's out in  
8 a minute, but then they get up, they go, then they're going  
9 to want to hang out and go to the bathroom and do whatever.  
10 There's no way we get them back in in probably less than 15.

11 So let's see where we are and how it goes and how  
12 we can work it out. I'm sure we can solve it in some way.

13 Anything else?

14 MS. MANDEL: Your Honor, one more issue, just to  
15 raise an ask about any preferences in this regard. There are  
16 two witnesses who will be presented through deposition  
17 testimony.

18 THE COURT: Uh-huh.

19 MS. MANDEL: So we just want to understand if  
20 Your Honor has any specific requests or procedures for them.

21 THE COURT: Are you -- is it video or transcript?

22 MS. MANDEL: Spoken -- read in, not video.

23 THE COURT: Read in. Just the transcript that  
24 people are going to read.

25 So my suggestion -- I'm open to other ways to do

1 it. My suggestion is the lawyer asks the questions, and  
2 somebody, a paralegal or someone who works for you, play the  
3 witness and read the answers. And then, you know, it's fine  
4 to read them in normally. You don't have to read them in the  
5 most boring voice possible. But it's not the Academy Awards,  
6 and don't over play it. And just like that, and just do  
7 that.

8 And I would explain to the jury, it's a deposition,  
9 and so Mr. or Mrs. So-and-So works for the law firm and is  
10 reading the answers. And they're not the deponent, but  
11 that's their answers they're reading, and you take it that  
12 way. And you're going to ask questions, or something like  
13 that.

14 I'm happy to do it another way if you want, but  
15 that's the way I've done it in the past, or other lawyers  
16 have done it in cases before me. It seems reasonable and  
17 fine. And so if you have another idea, I'm open to it, but  
18 otherwise, that's what I would say.

19 MS. MANDEL: And that's fine, Your Honor. I think  
20 the question -- and we haven't had an opportunity to fully  
21 discuss this yet, but each side has designated sort of some  
22 different portions of two different deposition transcripts,  
23 and so the question is if the Court has a preference about  
24 whether --

25 THE COURT: Oh. You mean, like, so it's --

1                   Give me the name of the witness.

2                   MS. MANDEL: Hacene Mekerri.

3                   THE COURT: Mekerri. Okay. So you want one part,  
4 and Mr. Hannon wants a different part. Right? Surprisingly.  
5 And so -- I suppose what I would say is you have one witness,  
6 and you ask the questions --

7                   Are the questions being asked ones you asked or  
8 ones that Mr. Hannon asked or -- no.

9                   MS. MANDEL: We sort of trade. So the questions of  
10 Mr. Mekerri were all questions that Mr. Hannon asked. And  
11 then Mason Menninger, who is Dr. Menninger's husband, is the  
12 other witness, and those were all questions that I asked.

13                  THE COURT: I see. I'd leave it to you first to  
14 talk to each other. I don't think you should switch witness  
15 speakers. That's confusing. So whoever is Mekerri should  
16 be -- I think should be Mekerri for whatever questions are  
17 asked of the person.

18                  And whether you want to have -- whether you each  
19 ask -- maybe you want to ask the questions that you want to  
20 ask, and you ask the questions that you want to ask. I don't  
21 have a strong preference about how you do that. All of you  
22 can figure it out. And if you agree, it will probably be  
23 fine with me. If you don't agree, then I'll decide if I have  
24 to.

25                  But I think my instinct is the witness shouldn't

1 change, the person being the witness, just because that will  
2 be confusing to them. It could be different for Mekerri and  
3 for Dr. Menninger's husband, but not within that.

4 Anything else?

5 MR. HANNON: Just one thing on that, on the  
6 transcript. There is some objections to some of the  
7 designations, and I think it's possible we might get to  
8 Mr. Mekerri's testimony on Monday. So I was --

9 THE COURT: I thought you were going to have your  
10 client testify on Monday.

11 MR. HANNON: There's a chance that I might have  
12 some of Mekerri's testimony read first.

13 THE COURT: I see.

14 MR. HANNON: I'm thinking through in my head the  
15 order here a little bit.

16 THE COURT: Okay.

17 MR. HANNON: But anyhow, just so --

18 THE COURT: So if there are disputes, it's probably  
19 better if I resolve them, rather than live. So I would say  
20 give me the transcript, the portion, just -- well, certainly  
21 give me the portion that you want to read. All I really care  
22 about is the portion that you want to read that's objected  
23 to, and enough around it to have a little bit of context, or  
24 something.

25 You could give me the whole transcript, if you

1 want, and just say, "Look, the disputed parts we want to  
2 read, you know, page 22, line 3 to 5, and they object." And  
3 tell me why. And maybe file that end of day tomorrow. And  
4 I'll kind of look at it, and we can talk about it Monday  
5 morning. You don't have to brief it. We can just discuss  
6 it.

7 How many objections are we talking about?

8 MR. HANNON: These are my objections, by the way.  
9 Just for the record.

10 If that's whether we land, yeah, I'm trying to  
11 think ahead.

12 THE COURT: If I allow them to read it, then you're  
13 going to read it first. Maybe.

14 MR. HANNON: No, I'm thinking more so if they  
15 want -- if where we land is we sort of read it all in at  
16 once, rather than breaking up and having one section read and  
17 another section read later, then we should probably have all  
18 the objections resolved earlier.

19 THE COURT: So I hadn't thought of that. I don't  
20 have a -- I have no view on that; that is, if you want to  
21 read in your case the portions that you want to read of a  
22 deposition; and then later in the case, on your portion, you  
23 want to read your portions, that's fine. To me -- because  
24 we're not recalling anyone. And then it could be a different  
25 person reading it, because it happened later. And I'm fine

1 with it. You don't have to read the deposition all at once,  
2 necessarily. I defer to all of you which way you want to do  
3 that.

4 As to the witnesses, my -- you know, somewhat I'm  
5 curious of your view, but I'll tell you what I did in a trial  
6 that I just did. Mr. Rice called the three defendants who  
7 were percipient witnesses, obviously, to what just happened.  
8 He called them, and I said to the defendants, "Just once. On  
9 your cross, ask whatever you want to ask." And then Rice,  
10 the plaintiff, got to ask on his redirect whatever came up.  
11 So they were extensive.

12 So there is a benefit to sort of once calling the  
13 witness, as opposed to twice calling the witness. I probably  
14 would lean that way. But I'm open to -- I do lean that way,  
15 but I'm open to hearing you, if you want to do it a different  
16 way.

17 MR. WATSON: I prefer all at once. But that's my  
18 position.

19 THE COURT: Do you care?

20 I don't think that what we do with deponents has to  
21 necessarily apply to people who are live. I view them  
22 differently.

23 (Counsel confers.)

24 THE COURT: You can think about that. You don't  
25 have to necessarily answer that right now. I don't need to

1 know now.

2 MS. MANDEL: Yeah, we would like to think about  
3 that. Thank you.

4 THE COURT: That's fine.

5 I have one other question for you. So there are  
6 federal law and state law parallel claims. Based on my  
7 general view and based on what you submitted as instructions,  
8 unless you tell me otherwise I'm assuming you agree that I  
9 just submit, like, one claim and explain the federal law  
10 discrimination claim. And their verdict determines the  
11 federal law claim and the state law parallel claim, rather  
12 than explaining it twice and asking for separate answers.

13 That's generally what I do. I find that people are  
14 generally agreeable to that. It keeps it focused for the  
15 jury. It's simpler. It makes the jury instructions shorter  
16 and less -- they are already complicated, but less  
17 complicated. And so you can -- that's what I'm intending to  
18 do.

19 And I didn't see that you really submitted  
20 separately, like, state law. I don't think it really makes a  
21 difference on the legal -- on what the jury would have to  
22 decide. So that's what I'm intending to do.

23 And I'm doing your submissions as agreeing to that.  
24 And you will have been deemed to agreed unless you object at  
25 a reasonable time in advance of me -- I mean, you can object

1 for the circuit whenever you want. But if you object at the  
2 charge conference, then it's kind of hard to, like, then  
3 write the state law part. And you're going to have to tell  
4 me what's different and why and what should I be instructing  
5 them on that would be better. Like if you want that, tell me  
6 now or Monday morning and submit something.

7           But I don't think you submitted separate things,  
8 which is fine. Like no one -- I'm not sure I've ever  
9 separately instructed people on parallel state law claims,  
10 because there's no -- I can't think of a reason why to do  
11 that, and so no one asks. But I'm just telling you that  
12 because the claims are in there.

13           And the way you resolve that, since the claims  
14 exists, is if the defendants win, you get judgment on the  
15 federal claim and the state law claim. And if the plaintiff  
16 wins, you get judgment on the federal and state law claims.  
17 And you don't get extra damages, and it is what it is. And  
18 then sometimes there's issues about prejudgment interest, or  
19 something, and those follow from the -- they aren't for the  
20 jury. Or if we need to ask the jury something, we can.

21           All right. I think that's it. Okay. I'll see you  
22 Monday morning at 9:00. And have a good day and weekend.  
23 Thanks.

24           (Court in recess at 4:27 p.m.

25           and reconvened at 4:34 p.m.)

1                   THE COURT: Okay. We're back in session in the  
2 Menninger case, and I understand there's a possible issue  
3 about witness availability or something?

4                   MR. HANNON: Yeah. So I just consulted with  
5 opposing counsel regarding some logistics.

6                   And backstory: So a number of the witnesses that  
7 we intend to call are individuals represented by PPD's  
8 counsel, Ogletree. We asked Ogletree whether or not they  
9 would produce those witnesses at trial. They agreed to do so  
10 in person. They're on our exhibit lists.

11                  THE COURT: On your witness list.

12                  MR. HANNON: I'm sorry -- I'm sorry, on the witness  
13 list. Excuse me.

14                  I was just advised, though, that none of those  
15 witnesses are going to be made available until the second  
16 week of trial, which creates possible problems just in terms  
17 of our -- whether or not we're going to finish our  
18 case-in-chief by the time they are made available.

19                  I can certainly arrange things and arrange all of  
20 them at the back to accommodate travel schedules. I'm happy  
21 to do that. But there might be a situation where I'm simply  
22 done with my other witnesses before the end of next week.

23                  These are all individuals that I've deposed. I'm  
24 happy to present them to the jury via deposition transcript.  
25 We expected to call them live, because they told us they

1       would produce them live. But it just creates a logistical  
2       issue, given that now they're not available until the second  
3       week.

4                     THE COURT: What do you want from me?

5                     MR. HANNON: That's an excellent question. I don't  
6       have an answer for you, except for this: Would -- would  
7       Your Honor permit us to present these witnesses via  
8       deposition, if they're not going to be made available next  
9       week during our case-in-chief, to have their deposition  
10      transcripts read in?

11                  MS. MANDEL: Your Honor, we strenuously object to  
12      that. These are witnesses who will be here in person. And  
13      we did say that we would have them in person at trial. They  
14      all live out of town. They're not at all local. And we have  
15      arranged for them to be here based on our general calculus of  
16      when we thought we would be getting to the time that would be  
17      appropriate for us to call them and as part of our defense,  
18      and that is when they arranged their travel.

19                  They are people who are leaving their families,  
20      their homes in other states and coming here, and they've  
21      arranged travel to be here. So they're available. They're  
22      going to be here, and they are going to testify live. There  
23      is no reason that they should be presented through deposition  
24      testimony.

25                  In fact, we just learned for the first time now

1       that one of plaintiff's witnesses, plaintiff's sister, who we  
2       had asked about, will, in fact, only be available to testify  
3       live a week from this Monday. So it's no different, a  
4       situation with that particular witness.

5           THE COURT: Slightly different, in that presumably  
6       that will be during your case -- during your defense, not  
7       necessarily when you exactly wished to call her, in terms of  
8       the order.

9           This -- the concern I think Mr. Hannon is raising  
10      is that he will possibly complete his case-in-chief before  
11      he's -- his case-in-chief, other than these witnesses, will  
12      be done, and those witnesses will be the -- like one or  
13      several days later.

14           So my suggestion is this. I'd like the -- that  
15      we're going to be going quickly, and that, therefore, your  
16      case is -- you anticipate that your case is going to be done  
17      before next Friday, in chief, other than these witnesses.  
18      And so I think you could --

19           And what I understand is that you're prepared to  
20      put them at the end of your case, Mr. Hannon, and that you're  
21      prepared -- you're willing, but that might still leave them  
22      being called before they're available -- before they're  
23      practically available.

24           MR. HANNON: Right.

25           THE COURT: And you're prepared to call them by

1 deposition and read the parts that you want. They -- under  
2 that variation, they could still be called live during the  
3 defendant's case for whatever the defendants want.

4 And you wish that procedure not to be used. Would  
5 that be fair?

6 MS. MANDEL: That's right, Your Honor.

7 THE COURT: So my suggestion is, first, just think  
8 about, like -- here's one practical solution you could all  
9 reach, which is that if you finish your case on Wednesday or  
10 Thursday, then you go to your case. But your case is not --  
11 you haven't rested. And you go to your case, present who you  
12 will. And then the witnesses are going to be available. And  
13 when they're available, you call them. And we'll just  
14 rearrange the order. And I'll tell the jury, we're doing  
15 this to accommodate people's schedules because people are  
16 coming from different places.

17 So you can call -- I don't know who these witnesses  
18 are, which ones, but Witness X lives in California, and is,  
19 you know, represented by defense counsel. And they're not  
20 available on Thursday, which is when, if you put them at the  
21 end, you would call them Thursday morning at 9:00. So  
22 they're available on Tuesday. So on Tuesday, we'll break  
23 from defendant's case, you'll call them.

24 And then you can either -- you can call them and --  
25 you know, some of this depends on whether they're testifying

1 once or twice, but those people -- one of the reasons we have  
2 people once is to not make them, especially if they live far  
3 away, to come here twice, which is a burden for people other  
4 than true parties.

5 So we could have them -- you could have them  
6 come -- you could call them on Tuesday, you could do your  
7 part. You could either cross them or just reserve it all.  
8 We could have them presented once, or they're your people, if  
9 you're willing to have them come twice, you could have them.  
10 And then if you don't want to get to them until Wednesday,  
11 that person, you could get to them on Wednesday. So we could  
12 essentially take them out of order in your case, right? Keep  
13 going. That's an easy solution.

14 And live is generally better than transcript,  
15 transcript being a little better than TV, in my experience.

16 But does that work for all of you?

17 MR. HANNON: I just -- I think the issue is I don't  
18 expect them to have any other witnesses, besides the same  
19 folks.

20 THE COURT: So in other words, if you finished --  
21 when do you think you might finish before those people?  
22 Rough idea.

23 MR. HANNON: It would be, you know, Thursday or  
24 Friday. It's -- most likely a Friday morning kind of thing.

25 THE COURT: I see. So we're really talking about

1 just Friday, probably.

2 MR. HANNON: Probably.

3 THE COURT: Maybe a little bit on Thursday.

4 MR. HANNON: Yeah.

5 THE COURT: So the issue is that, at that point,  
6 all of the witnesses that you wish to call, who are under  
7 their control, are -- you don't have other witnesses that you  
8 would be calling. Like say he finished Thursday -- Thursdays  
9 before 1 o'clock or Friday morning, is there anybody that you  
10 would have to call who doesn't fall into this category of  
11 people he wants to call who are available only the following  
12 week?

13 MS. MANDEL: I'm just trying to understand the --

14 THE COURT: In other words, he -- like let's say he  
15 said to me, "Judge," -- it's Thursday at 10:30 or Friday  
16 morning at 10 o'clock, and he says, "Judge, I'm done with all  
17 the witnesses that I have. There are some more witnesses,  
18 but they're not available until next week."

19 They're the, I'll call it, five people who do or  
20 did work for your client, who you've agreed to produce, but  
21 they're not available until the following week. So then I  
22 would turn to you and say, "Okay. Is there anyone for you to  
23 call."

24 MS. MANDEL: Right. So we have -- there's one  
25 witness -- the person who will be our client representative

1       with us through the case is also a witness who we plan to  
2       call, and she'll be here through the duration.

3           THE COURT: And how long of a witness is she? Is  
4       she like ten minutes or is she like --

5           MS. MANDEL: No, I'd say she's probably more like  
6       an hour.

7           MR. HANNON: Can I ask who that is, Judge? Because  
8       that's one of the people on my list.

9           MS. MANDEL: That's Deborah Ballweg.

10          MR. HANNON: Okay. All right. Well, that's  
11       helpful to know that she'll be available all week.

12          THE COURT: So she's going to be here anyway.  
13       She's one person who solves -- partway.

14          So I think, in the first instance, let's see if  
15       this issue arises. Move quickly. I'm happy to phase this  
16       issue, because it means we're going quickly. So don't slow  
17       down to avoid the issue.

18          MR. HANNON: I'm just sensitive to the if we stop  
19       at 12:40, you want another witness on the stand.

20          THE COURT: Yes, I'm glad you're sensitive to that.

21          And that is my view. I didn't say that this  
22       morning. Mr. Hannon knows that from the last trial. So not  
23       only at 12:40, at 12:55 call another witness. So 9:00 to  
24       1:00 means 9:00 to 1:00, not 9:00 to 12:30, not 9:00 to  
25       12:55.

1                   So let's see where we are at the end of the day  
2 Monday or Tuesday morning, and then we'll see and figure out  
3 if there's some solution. It might depend, also, how long  
4 it's going to take and how much time there might be and  
5 whether there's someone else we could substitute it. I think  
6 that's the time -- we'll have a better handle on it then.

7                   MR. HANNON: Okay. Thank you.

8                   THE COURT: Okay. Anything else? No. All right.

9                   MR. HANNON: Bye again.

10                  THE COURT: Bye again.

11                  THE DEPUTY CLERK: Court is in recess.

12                  (Court in recess at 4:43 p.m.)

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**CERTIFICATE OF OFFICIAL REPORTER**

I, Rachel M. Lopez, Certified Realtime Reporter, in  
and for the United States District Court for the District of  
Massachusetts, do hereby certify that pursuant to Section  
753, Title 28, United States Code, the foregoing pages  
are a true and correct transcript of the stenographically  
reported proceedings held in the above-entitled matter and  
that the transcript page format is in conformance with the  
regulations of the Judicial Conference of the United States.

Dated this 13th day of June, 2023.

/s/ RACHEL M. LOPEZ

Rachel M. Lopez, CRR  
Official Court Reporter